Supreme Court, U.S.
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No. _____

# In The
# Supreme Court of the United States

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RONALD W. ERICKSON,
d/b/a RXR RAILROAD & DEPOT CO.
*Petitioner,*

v.

WASHINGTON STATE
DEPARTMENT OF NATURAL RESOURCES
*Respondent.*

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**On Petition for Writ of Certiorari to the Washington State Court of Appeals Division II**

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## PETITION FOR A WRIT OF CERTIORARI
(corrected)

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## QUESTIONS

Is the application of abandonment's "cessation of purpose/ use" doctrine on railroad property sold by a bankruptcy court a violation of the federal Supremacy Clause; Due Process; the Commerce Clause; the legislated intentions in congressional bankruptcy and transportation laws; or common law's 1881 "shifting public use" doctrine?

Did the Washington State courts or the State Department of Natural Resources act in violation of due process and outside of their legislated authority by applying abandonment's "cessation of purpose/ use" doctrine to legislated railroad easements through state lands in non compliance with RCW 79.36.500, the State Constitution, and the vested public rights of common law's "shifting public use" doctrine?

## PARTIES TO PROCEEDING

There are no other petitioners in this proceeding. RXR Railroad & Depot Company is individually owned by Ronald W. Erickson.

There are no additional respondents other than the Washington State Department of Natural Resources. There are two non-participating defendants in this action: Olympic Eagle, Inc. and Warren L. Stetson Trust.

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## OPINIONS BELOW

March 8, 2006: The Supreme Court of Washington denied Petitioner's "Petition for Review" (App. C-1).

June 22, 2005: The State Court of Appeals Issued an "Order Denying Motion to Reconsider" (App. D-14).

May 10, 2005: The State Court of Appeals" issued their unpublished opinion (App. A-1).

Feb. 20, 2004: Jefferson County Superior Court issued an "Order Granting Department of Natural Resources' (DNR's) Motion for Summary Judgment Quieting Title in DNR and Dismissing All Remaining Claims" (App. E-15).

Dec. 12, 2003: The County Superior Court issued an "Order of Dismissal of Timber Claim" (App. F-18).

## JURISDICTION

**A. Federal Jurisdiction:**

This writ of certiorari is to the Washington State Court of Appeals. The State Supreme Court denied Petitioner's "Petition for Review" (App. C-12). This Court has jurisdiction under 28 U.S.C. § 1257. The granting of abandonment on petitioner's rail property was repugnant to the bankruptcy and transportation laws of Congress, the Constitution and traditional common law doctrines.

**B. Issues Were Raised in the State Courts**[1]

The federal questions were timely raised and this Court has jurisdiction to review the judgment on a writ of certiorari. The lower courts had access to the Bankruptcy Court's Final Decree (CP 54) where it established,

> 6. On the Consummation Date all right, title and interest of the Trustee in the property of the Estate shall vest in and become the absolute property of the Reorganized Company nothwithstanding the laws of any state or the decision or order of any state authority to the contrary. Except as otherwise provided in this Order or in the Plan, the Reorganized Company shall take the property fee and clear of all claims, rights, demands, interests, liens and encumbrances of every kind and character. The Trustee is authorized and directed to execute and deliver to the Reorgnaized Company a deed and a bill of sale transferring all the property of the

[1] Abbreviations:
App. : Appendix to Petitioner's Writ of Certiorari;
app : Appendix to other document;
Chicago : Chicago Milwaukee & Puget Sound R.R. Co.; Chicago, Milwaukee & St. Paul Ry. Co.; or Chicago, Milwaukee, St. Paul & Pacific R.R. Co.;
CMC : CMC Real Estate Corp. as assigned trustee of the BANKR. CT.;
CP : Clerk Papers;
DNR : WA State Department of Natural Resources;
MOCD : WA Supreme Court's Motion to Overrule Clerk's Decision;
MR : WA Supreme Court's Petitioner's Motion to Reconsider;
OA : WA Court of Appeals' Oral Argument;
OB (AB in quotations) : WA Court of Appeals' Corrected Opening Brief of Petitioner;
PR : WA Supreme Court's Petitioner's Petition for Review;
PR-DNR : WA Supreme Court's PR Answer by Respondent;
RB-DNR : WA Court of Appeals' Respondent's Response Brief;
RB : WA Court of Appeals' Petitioner's Reply Brief;
JCOA : Jefferson County Superior Court Oral Argument on Motion for Summary Judgment.

Estate. . . . (App. N-41)

The federal issue was heard in the Jefferson County Superior Court's oral arguments in response to DNR's "Motion for Summary Judgment." In the ensuing oral presentations, petitioner was asked by interim Judge Spector,

> When you bought this property, the easements didn't exist anymore, so how are you saying that they somehow are – let me ask you the question and then you can respond. How are you, by virtue of law, how are you indicating or demonstrating in this court that somehow this still had a right of way as a railroad when you purchased it even though it had been long ago been [sic.] abandoned, some eighty years prior?"

Petitioner replied,

> . . . inferences that the sale abandonment [sic. abandons] is-is an inference. They sold it in good faith. They sold it. If it was abandoned, they wouldn't have sold it. . . they were - they were permissioned [sic.] by the bankruptcy court and if you read in the bankruptcy proceedings that they were entrusted to sell all of their assets. . . . The legislative grant of a railroad right of way is not just a simple contract. It can't be abandoned. It is a legislated right." (JCOA)

DNR's response was, "Yes, they were entrusted to sell their assets. They could only sell what they own. . . ." Interim Judge Julie Spector specifically declared, "I am going to grant summary judgment on behalf of DNR. I don't believe there is ANY [emphasis added] issue for the court."

The State Appellate Court simply passed on commenting on the State preempting federal bankruptcy law and affirmed that the actions before, by, and after the bankruptcy court's sale of property proved abandonment of the asset (UO 5, 6). This was done in spite of petitioner's specifically stating that "[t]he [bankruptcy] court authorized the disposition of RR [railroad] assets under Section 77 of the [1889] Bankruptcy Act (CP 113), and the 1985 Final Decree of Milwaukee's bankruptcy vested all its property to the new 'reorganized company, notwithstanding the laws of any state or the decision or order of any state authority to the contrary' (EA, CP 54)." (RB 22, App. N-41). Petitioner had also asserted that,

> Pre-bankruptcy abandonment claims are not valid after bankruptcy as all property and franchises survive a bankruptcy (Detroit 184 U.S. at 395, app r-29), and is subject only to the people or court (Paige 70 N.E. at 217, AB at 12, Northern 35 L.Ed 1097, app r-30). This is true of the Milwaukee bankruptcy (CP at 54, app r-31). (RB 14, OB 12)

In the appellate oral argument, DNR was asked by the judiciary why they failed to file a complaint with the bankruptcy court. Additional references to the record regarding the bankruptcy laws are found in App. O-43.

**C. Request for Continuance**

The record is unclear on the time of abandonment.

The Jefferson County Superior Court Interim Judge believed some "80 years ago" (JCOA, MOCD 7). The trial court ruled that Chicago had abandoned its rights under the various easements before DNR took any actions.

The Washington State Court of Appeal's opinion was not specific and cited actions before, during, and after the bankruptcy sale of property (UO 5). Because of the lack of clarity on the weight the court gave to specific evidence, before bankruptcy or by the bankruptcy trustee; and because the state courts passed on a number of issues: legislated easements being equal under the law to congressional railroad easements; interpreting the 1901 Wash. Laws 173 § 7 to grant immunity from the court granting an abandonment; the impact of the 1881 "shifting public use" doctrine; and railroads being public "roads" (OB 25, 27-34); petitioner requests the United States Court for a continuance of the cause to afford opportunity for amplification of the record disclosing the basis of decision.

## CONSTITUTION AND STATUTE PROVISIONS

The pertinent provisions of the texts of the following are in the Appendix: U. S. CONST. art. 1 § 8 cl. 3; U. S. CONST. art. 1 § 8 cl 4; U. S. CONST. art. 6 § 2; U. S. CONST. Amend. XIV § l; 13 Stat. 365 (1864); 25 Stat. 180 (1889); 11 U.S.C. § 554(a) (1986); 11 U.S.C. § 1174 (1978); 28 U.S.C.

§ 1257 (1988); 45 U.S.C. § 915(d) (1995); 49 U.S.C. § 22301 (1993), THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY (1998); Wash. Rev. Code § 4.04.010 (1891); Wash. Rev. Code § 79.36.500 (2003); Wash. Rev. Code § 81.36.040 (1961); 1901 Wash. Laws 173; Fed. R. Civ. P. § 52(a) (1995); Fed. R. Bankr. P. § 3007-1 (1991); and the BANKR. N.D. LBR Rule 3007-1.

## STATEMENT OF THE CASE

### A. Proceedings in the Courts Below

On June 6, 2003, petitioner filed a "Complaint for Quiet Title, Timber Trespass, Declaratory Judgments and Injunctive Relief" (CP 1).

On September 4, 2003, petitioner filed an "Amended Complaint for Quiet Title, Declaratory Relief, Injunctive Relief and Damages" (CP 23).

On December 12, 2003, the Washington State Jefferson County Superior Court issued an "Order of Dismissal of Timber Claim" (App. F-18).

On February 20, 2004, after hearing oral argument, the Washington State Jefferson County Superior Court issued an "Order Granting Department of Natural Resources' (DNR's) Motion for Summary Judgment Quieting Title in DNR and Dismissing All Remaining Claims" (App. E-15).

On May 10, 2005, after hearing oral argument, the Washington State Court of Appeals filed their unpublished opinion affirming the Jefferson County Superior Court's order dismissing petitioner's complaint (App. A-1).

On June 22, 2005, The Washington Court of Appeals issued an "Order Denying Motion to Reconsider" (App. D-14).

On March 8, 2006, the Washington State Supreme Court signed an "Order" denying petitioner's "Petition for Review" (App. C-13).

On March 22, 2006, a "Mandate" for the Washington State Court of Appeals Div. II was issued (App. B-11).

On April 6, 2006, the Clerk of the State Supreme Court placed a "Motion for Reconsideration" in the file with no court action.

On May 6, 2006, the Clerk of the State Supreme Court placed in the file with no court action both a "Motion to Overrule Clerk's Decision." and a "Motion to Grant Determination."

**B. Statement of the Facts**

The 1901 Wash. Laws 173 created public railroad easements through state land (App. L-34).

In 1909 and 1910 Chicago acquired rail properties under the 1901 Wash. Laws 173 (CP 47-60, 65, 69, 74, 80, 85; OB 3).

December 19, 1977, Chicago, filed for bankruptcy reorganization in the Northern District of Illinois, Eastern Division. The final order was issued November 12, 1985, awarding all assets to trustee CMC (CP 23; CP 51; PR 3, 9).

CMC sold property as trustee of the bankruptcy court to Olympic Eagle, Inc. and Warren L. Stetson Trust recorded Sept. 2, 1993 (CP 113).

Olympic Eagle, Inc. and Warren L. Stetson Trust sold property to petitioner on Aug. 11, 1998 (CP 90).

The property never was developed (OB 3).

DNR did not file a complaint with the Bankruptcy Court challenging ownership of said rail properties.

## ARGUMENT

### A. Overview

This case, here on certiorari, is about the future of railroads in Washington State and the United States. This case features important considerations and questions in regard to the "Final Decree" in the bankruptcy of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (CP 51, App. N-41) and the Federal Rules of Bankruptcy

Procedure Rule 3007, BANKR. N.D. LBR Rule 3007-1 (App. M-39) that require challenges to title to be heard by the bankruptcy court.

This case is also about the unlawful application of two components of abandonment theory in Washington identified as the "cessation of purpose/ use" and "automatic reversion." Presumption of abandonment in this case was a violation of the federal Supremacy Clause, Commerce Clause, Due Process Clause (OB 4, RB 14, MOCD 4) and the bankruptcy laws of the United States, as well as being a violation of Washington's public trust doctrine on railroads (OB 38, 40, 42). The due process issue and bankruptcy issue was passed over by the court.

On the common law level, this writ of certiorari concerns the State Court's failure to determine if the 1881 "shifting public use" doctrine, modified in 1888 by WASH. REV. CODE § 81.36.040 (OB 7, 34; RB 1; PR 12, 13, App. K-32), was an additional public use of railroad rights of way exempting such from abandonment law. On the state level this case was about the state court's failure to interpret the 1901 Wash. Laws 173 § 7 (WASH. REV. CODE § 79.36.500, App. K-32, -34) exempting petitioner's easements from a state court judgment as an agent of the state granting a transfer of title through abandonment. On the state level,

this case is about the State Department of Natural Resources not having proper legislative authority to abandon public railroad rights of way through public lands (OB 43, PR 11). The state courts passed on these issues.

Petitioner claims equal due process under the Constitution to be exempt from abandonment law as are congressional railroad easements on public lands (OB 24, PR 10). Petitioner also argued by *pari materia* (OB 4, 31, 32, 38, 39; RB 21) that county road vacate orders would apply to revert state land easements to fee owners (OB 35).[2] The legislated laws that created petitioner's rights of way identified all easements through state lands as "roads"[3] (1901 Wash. Laws 173 § 1; OB 27-34; PR 17). The State Appellate Court found petitioner's property railroad easements only and not roads (UO 7).

**B. THE WRIT SHOULD BE GRANTED Because it is About the Future of Railroading in America.**

Petitioner swears:

> I purchased these railroad rights of way for rail development. The laws of Washington State require a rail office on rail property (WASH. REV. CODE § 81.36.070). I had first thought of using such an office to include a rail museum just as the Northern Pacific

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[2] *State v. Wright*, 529 P.2d 453, 457 (1974) citing *Connick v. Chehalis*, 333 P.2d 647 (1958).

[3] 1901 Wash. Laws 173 § 1, App. L-34.

Railroad had in Tacoma, after a court declaratory judgment affirming such use was appropriate. I explored public interest for a historic 1900 railroad timber harvest enactment conditioned upon a court's declaratory approval also.

Since my rail holdings adjoined near the intersections of three old un-vacated pre 1896 county cedar plank roads through then federal public lands, I spoke with Jefferson County Commissioners about a small magnetic "skateboard" or "pod" monorail system on such. I believed such was a possibility from the city of Forks on Highway 101 to the Olympic National Park, up and down the Hoh River Valley to the Olympic Park ocean beaches near Oil City (undeveloped) and south via Mason County to Olympia. These were historic trails upon which the infamous Iron Man of the Hoh carried his famous pot belly stove with a one hundred pound sack of flour therein. I formally recorded the existence of a one-mile portion of the forty-seven mile 1895, un-vacated county road called the "Pacific Road" for protection with the State Department of Archeology and Historical Preservation. I located additional miles of un-vacated county "plank" roads in adjoining Clallam County.

I was hoping to connect such plank roads with my Jefferson rail property under WASH. REV. CODE § 81.36.040 and onto my rail holdings in Port Angeles for a portion of a rail route around the Olympics. My original intent was to create a small magnetic monorail system to accommodate handicapped visitors to the Olympic Peninsula and its International Park. Later this dream evolved into the possibility of resurrecting old railroad rights of way from Chicago to the Pacific.

The Jefferson County Commissioners were not interested in developing or assuming ownership of "easements" at that time, but were open to listening to a proposal to replace the Upper Hoh Road as such was the most costly county road to maintain. I did not proceed with any application for some of the $17,500,000,000 of federal money available yearly from 1998 to 2003 for light rail development (49 U.S.C. § 22301(e) [App. I-27], OB 25, OB app G[4]).

DNR's challenge to my ownership interfered in dialogues with potential supporters. The State Land Commissioner, Doug Sutherland, denied seeing me about that possibility instead of this litigation. The State DNR also interfered with my prior negotiations with Mr. Middleton by acquiring his adjoining sec. 16 rail rights (CP 94, 96). I had a dream and I do not like giving it up. I still believe it is possible for Congress to reclaim some of the old land-grant roads (appropriate English for "land-grant railroads") for future public uses. And, I certify under penalty of perjury under the laws of the United States that the foregoing is true and correct.

## C. THE WRIT SHOULD BE GRANTED Because it Affects Many Similar Railroad Rights of Way Through State Lands and Future Uses Thereof.

There are over three-hundred forty-three legislated public railroad acquisitions similar to petitioner's through state lands (PR 4, PR app A, App. S-60) from about sixty different corporations (App. R-57). There are sixty-seven acquisitions on state lands by federal land-grant railroad

[4] THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY, Pub. L.No. 105- 178, codified in scattered sections (1998), App. J-29.

companies amounting to 540 acres (App. Q-53). There were seventy-five acquisitions by "Chicago" on state lands representing about 700 acres (App. P-47). Although these facts were not known to the lower court, they were known to DNR. All of these rail rights were created by the state legislature outside of eminent domain proceedings or the threat of condemnation. As such abandonment doctrine must not apply to petitioner's legislated easements (OB 15; ACOA; MR 6, 9).

### D. THE WRIT SHOULD BE GRANTED Because It Affects the Fluctuating Administrative Policies of the Washington State Department of Natural Resources in Regard to Railroad Properties.

Rule 52(a) of The Federal Rules of Civil Procedure sometimes allows federal courts to hear new evidence to correct erroneous facts. In this case, DNR has argued abandonment preempting the federal bankruptcy rules, Fed. R. Bankr. P. § 3007, BANKR. N.D. Ill. LBR 3007-1 and the BANKR. Court's Final Decree for Chicago. However, DNR willfully concealed from the lower courts DNR's relinquishing of their abandonment claim with Chicago in 1978 (App. U-68). Three letters from Chicago between 1975 to 1978 resulted in State Land Commissioner Bert Cole ordering a recorded department order reversing DNR's assertion of title on nearly adjoining railroad rights of way

(App. T-61). The third letter (App. T-67) was after Chicago filed bankruptcy in 1977 (Cp 23). DNR knew this.

This Court could consider this information to issue an opinion about the importance of introducing such facts after a judicial time of discovery when there is no "examination of character of the witness" (DNR) or when there is no jury.[5]

DNR also preempted federal bankruptcy laws by voiding a Jefferson County tax sale of rail rights on adjoining section 16 claiming prior abandonment (CP 94, 96, RB 12). Tax sales transfer railroad property rights (OB 11).

## E. THE WRIT SHOULD BE GRANTED to Determine Whether the Granting of Abandonment of Petitioner's Railroad Easements by the State of Washington Preempts Federal Bankruptcy Laws.

Article I, Section 8, Clause 4 of the Constitution provides that Congress shall have the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States." The final decree of the Chicago bankruptcy specifically decreed that, ". . . nothwithstanding the laws of any state or the decision or order of any state authority to the

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[5] Fed. R. Civ. P. § 52(a) [28 U.S.C. app. § 52(a) (1995) at 781 *Notes of advisory committee on Rules – 1985 Amendment* citing: *Bose Corp. v. Consumers Union of United States, Inc.*, 466 U.S. 485, 104 S. Ct. 1949, 1958 (1984); *Pullman Standard v. Swint*, 456 U.S. 273, 293 (1982); *United States v. General Motors Corp.*, 384 U.S. 127, 141 n. 16 (1966); *United States v. United States Gypsum Co.*, 333 U.S. 364, 394-96 (1948)].

contrary . . . . the Reorganized Company shall take the property free and clear of all claims, rights, demands, interests, liens and encumbrances of every kind and character. . . ." (App. N-42).

The State of Washington follows "the common law, so far as it is not inconsistent with the Constitution and laws of the United States. . . ."[6] Common law will also not be allowed to control where the conditions are those not contemplated by the common law[7] (OB 23, MOCD 3). Bankruptcy of huge railroad corporations are one such condition.

The State failed to file a challenge to title in the bankruptcy court[8] in 1978 and now cited evidences that occurred before, during, and after bankruptcy to prove abandonment (UO 1, 5). All claimable property transfers into the bankruptcy court (OB 8, MOCD 12).[9]

Simply stated, the State preempted federal bankruptcy laws by claiming the sale of a railroad asset a cause of abandonment when sold to pay debts (JCOA, PR-

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[6] WASH. REV. CODE § 4.04.010, App. K-32.

[7] 15A AM. JUR. 2D *Common Law* § 12 (2001) at 577.

[8] BANKR. N.D. Ill. LBR 3007-1(B) (2) (B).

[9] *Segel v. Rochelle*, 382 U.S. 375, 378, 86 S. Ct. 511, 15 L.Ed.2d 428, 431 (1965), superseded by statute, *Segal v. Rochelle*, 336 F.2d 298, 300 (1964) *reh'g. denied.*

DNR 13). "The Standard of Review and Preemption Standards" has concluded that, "Whether federal law preempts state law turns principally on congressional intent. U.S.C.A. Const. Art. 6, cl. 2."[10] The "reorganized court and the Interstate Commerce Commission have exclusive authority over abandonment of railroad lines and such authority is not limited to discontinuation of rail service but also includes disposition of rail property."[11]

For a state court action to diminish a value of a transferred asset by asserting an intent by the court to abandon such when intent is to ". . . reduce to money all of the property of the estate . . ."[12] is counterproductive to congressional intent to raise money for debtors. It is also counter to the Commerce Clause allowing congressional jurisdiction by the bankruptcy court on rail property through reorganization and Congress' intent to support magnetic light rail development [13] (OB 25, RB 22, MOCD 5, App. I-27, J-31).

Similarly, DNR's objection ". . . long after the plan

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[10] *Millsaps v. Thompson,* 259 F.3d 535, 538 (6th Cir. 2001).

[11] *In re Matter of Boston &Maine Co.*, 596 F.2d 2, 5 & 7 (1st Cir. 1979).

[12] 11 U.S.C. § 1174.

[13] THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY, Pub. L.No. 105- 178, codified in scattered sections (1998), App. J-29.

had been approved and long after it had been confirmed is too [**13] tardy an application to deserve consideration and one we think it[is] not contemplated at that stage under the Bankruptcy Act"[14] (PR 9).

The railroad easement asset was assigned to CMC as a trustee of the bankruptcy court as noted on deed of sale (CP 113). The bankruptcy court did not order abandonment[15] of the property but allowed its sale (CP 113). The State cited the common law of "cessation of purpose/ use" to abandon a bankruptcy railroad sale at time of sale (RB-DNR 11, 12; UO 5). However, trustees of the bankruptcy court are the only agent to grant abandonment after a notice and hearing.[16]

Washington court actions directly challenge the federal bankruptcy authority to lawfully transfer property (CP 47-54; OB 8, 12; RB 14). "Only the trustee is expressly authorized under the Bankruptcy Code to abandon property of the estate."[17] Congress specifically intended the bankruptcy court to reassign railroad property for railroad purposes[18] to whomever they chose. "It is immaterial that the

[14] *In re Chicago, Rock Isand & Pacific Ry. Co.,* 168 F.2d 587, 593, (7th Cir.1948); *cert. denied* 335 U.S. 855 (1948).

[15] 11 U.S.C. § 554 (b) 1986), App. I-25.

[16] See *Id.* §§ 554, 1174 (1978), App. I-25.

[17] *In re Wideman,* 84 B.R. 97, 101 (Bankr. W.D. Tex. 1988).

[18] 45 U.S.C. §§ 915 (1995), 903 (1979), 904 (1979), App.I-26.

exercise of that power conflicts with state enactments[19] . . . **notwithstanding the laws of any state or the decision or order of any state to the contrary** (emphasis added)."[20] A railroad bankruptcy court's jurisdiction ". . . is not limited to the prevention of interference with the use of the property by the trustee; it 'extends to the adjudication of questions respecting the title.' *Ex parte Baldwin*, 291 U.S. 610, 616; *Thompson v. Texas Mexican Ry. Co.*, 328 U.S. 134, 140."[21]

## F. THE WRIT SHOULD BE GRANTED to Bring Clarity in the Application of Abandonment's Automatic Reversion and "Cessation of Purpose/ Use" Doctrines so as to be Lawfully Applied in Harmony With the Public Trust Vested by Common Law's 1881 "Shifting Public Use" Doctrine.

### 1. "Automatic Reversion"

Abandonment's "automatic reversion" to fee owner was established in *Morsbach v. Thurston County.*[22] (OB 12, 13,23, PR 9-11). In Washington "[w]hen a railroad abandons an easement, the right of possession reverts to the landowner. *Roeder Co. v. Burlington N. . . .*" (UO 5, *E.g.*, App.A-5).

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[19] *Chicago*, 168 F.2d at 590; *See Callaway v. Benton*, 336 U.S. 132, 148 (1948), e.g.; *Commonwealth of Massachuesetts v. Bartlett*, 266 F. Supp. 390, 393 (D. C. Mass. 1967) (Court upheld state needed ICC and BANKR. CT. approval before taking ownership of rail property).

[20] *Chicago*, 168 F.2d at 617, App. N-42.

[21] *Gardner v. New Jersey*, 329 U.S. 565, 567 (1946).

[22] *Morsbach v. Thurston County*, 278 P. 686, 690 (1929), *E.g.*

Such doctrine, however, is unlawful to apply to all easements. "Automatic reversion" is unconstitutional in regard to federal land-grant roads [railroads]. The federal courts have affirmed that land-grant roads are a "special creation" of Congress and exempt from the common law of abandonment (OB 24, PR 10).[23] *Idaho v. Oregon Short Line R.R. Co.* affirmed,

> . . . Congress had authority, by virtue of its broad power over interstate commerce, to grant such easements subject to its own terms and conditions. . . . Congress could pre-empt or override common law rules regarding easements, reversions, or other traditional real property interests.[24]

"Automatic reversion" must not apply until such land-grant roads are "extinguished" by Congress as per the Enabling Land Grant agreement, State Enabling Act, 25 Stat. 180 § 10 (OB 34, App. H-23). The United States Attorney General signed off such interests in *Boise Cascade v. Union P. R.R. Co.*.[25] Congress in The Statutes at Large

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[23] *Barney v. Burlington N. R.R. Co.*, 490 N.W.2d 726, 729 (S.D. 1992) *cert. denied* 507 U.S. 914 (1993); Cf. *Puett v. Western Pacific R. Co.*, 752 P.2d 213, 217 (Nev. 1988) (common law easement of necessity not applicable to grants of Congress); *See generally: Leo Sheep Co. v.United States*, 440 U.S. 668, 688 (1979) (liberal interpretations to retain intent of grantors); OB 15, 18, 24, 44 citing *Charles River Bridge v. Warren Bridge*, 36 U.S. 420 (1837) in app Q-10, -18; *E.g.*

[24] *State of Idaho v. Oregon Short Line R.R. Co.*, 617 F.Supp. 207, 212 (D.C. Idaho 1985).

[25] *Boise Cascade v. Union P. R.R. Co.*, 630 F.2d 720, 723 (10th Cir. Utah 1980).

retained additional rights on the Northern Pacific Railroad Company's land-grant road. The grant reads,

> '. . . to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times (but particularly in the time of war) the use and benefits of the same for postal, military and other purposes, Congress may, at any time, having due regard for the rights of said Northern Pacific Railroad Company, add to, alter, amend or repeal this Act.' 13 Stat. at L. 366, 368, 372 [sic].[26] (App. H-23)

Similarly, petitioner's railroad easements are creations of a state legislature (1901 Wash. Laws 173; OB 29, 30) with no other restriction than to be used for railroad purposes. Both were created outside the arena of railroads exercising their eminent domain powers acquiring property under a threat of condemnation (ACOA, PR 7). Under the Constitution's Equal Due Process, "automatic reversion and "cessation of purpose/ use" doctrine must not apply. Legislated and congressional railroad easements must be treated the same (OB 24) having been created under laws of a "different color"[27] than eminent domain acquisitions (OB 15). Due process does apply (OB 43; RB 14; MOCD 4,16). State courts have historically ruled that, ". . . a resolution . . .

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[26] *Northern Pacific R.R. Co. v. Territory of Washington,* 142 U.S. 492, 493 (1891).

[27] *Internet "L.O.L." Inc. v. Dry Humor,* 8 U.S. 2, 4 Good Constitutions 2006, 1 New Ed. 2006 (June 6, 2006).

authorizing private persons to construct and operate a railroad upon certain conditions, without limitation as to time, or reserving a power of revocation, was not a license, nor an act of municipal legislation merely, but a contract, which if valid, it could not abrogate.[28]

"Automatic reversion" also must not be presumed to apply to three Washington railroad companies' acquisitions as the Washington Territory Legislature established all such acquisitions to be in "fee" since the 1850's (OB 30, 36).

2. "Cessation of Purpose/ Use" Doctrines

The "cessation of purpose/ use" doctrine (OB 23) says (UO 5), ". . . conveying a public easement for a private use abandons the easement. *Brewer and Taylor Co. v. Wall*, 299 Ark. 18, 769 S.W.2d 753, 756 (1989)."

Many courts have applied such doctrine to rule non railroad public use proves abandonment. *Morsbach v. Thurston County; Schnabel v. DuPage County*; and *Lawson v. State*; *King County v. Squire Inv. Co.*[29] are examples.

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[28] *Metropolitan C. R.R. Co. v. Chicago W. D. R.R. Co.*, 87 Ill. 317 (1877).

[29] *Morsbach* 278 P. 686, 687 (easement gift to county by railroad); *Schnabel v. DuPage Cy.*, 428 N.E.2d 671, 673 (1981) (railroad conveyed to county, county granted a ten year lease for public trail); *Lawson v. State*, 730 P.2d 1308, 1310 (1986) (state acquired railroad esaement for trail use); *King County v. Squire Inv. Co.*, 801 P.2d 1022, 1023 (1991) (King County acquired railroad easement for trail use); *E.g.*

Here intent to build public trails (primitive roads) was found to bring abandonment. If the "cessation of purpose/ use" component of abandonment is found to be inadequate, then compatible non-conflicting uses may be considered acceptable as "abuses or misuses" of railroad rights of way (RB 9).

A modern definition of abandonment is,

> . . . voluntary relinquishment of property or a right by the owner or holder, with the intention of termnating ownership and without vesting ownership in another person. Abandonment is composed of two elements, an intention to reliquish the right or property without intending to transfer title to any particular person and the external act by which such intention is carried into effect; both elements must concur. See Roebuck v. Macosta County Road Commission, 229 N. W.2d 343, 59 Mich. App. 128. . . .[30] (App. V-70)

Traditionally abandonment had a "destructive" element (OB 16) or an "act to repudiate ownership[31] (OB 17, PR 13). Is this no longer a necessary component to bring abandonment? Presumed "automatic reversion" founded on a "cessation of purpose/ use" doctrine is a violation of the current congressional intent to encourage future rail development under the Constitution's Commerce Clause for use as light rail development such as a magnetic levitation

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[30] *The Attorney's Pocket Dictionary,* (visited Aug. 21, 2003), at http:// www.landlords-tenants.com/dictionary.asp?wordsstr=abandonment.

[31] *Martel v. Stewart,* 628 P.2d 1069, 1071 (1981).

monorail system (OB 25, App. I-27, J-31).[32]

3. 1881 "Shifting Public Use" Doctrine

*Presault v. U.S.*[33] (RB 9, PR 12) made reference to common law's 1881 "shifting public use" doctrine affirming that, "Under the doctrine of shifting public use, when an easement is given for public use, such as a railroad, and then put to another similar use, no abandonment will be held to have occurred. . . ."

Washington State accepted the "shifting public use" doctrine with a modification in 1888, WASH. REV. CODE § 81.36.040 (PR 12 [typo. Error], App. K-32) and called railroads "roads" in its legislation (1901 Wash. Laws 173 § 1; OB 25, 27-34; App. L-34). The State intended railroads to be treated as public roads. If abandonment law ONLY applies to railroads that are ONLY railroad easements and nothing more as petitioner argued (OB 2, 4, 12; UO7) and the "shifting public use" doctrine is applicable, then abandonment law would not apply!

Earlier decisions of the courts made a distinction between conveyance of public easements for public or private use. The lower courts in *Lawson v. State* and

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[32] THE TRANSPORTATION EQUITY ACT FOR THE 21ST CENTURY, Pub. L.No. 105- 178, codified in scattered sections (1998), App. J-29.

[33] *Presault v. U.S.*, 24 Cl.Ct. 818, 832 (1992).

*Morsbach v. Thurston County* illustrate the acceptability of public use. *Brewer v. Wall* applied to petitioner (UO 5) illustrates that private use abandons.[34] Justice Utter in the dissenting opinion of *Lawson v. State*[35] (OB 40) affirmed viable public use. Many people would benefit if this Court affirmed public use of railroads as permissible under the "shifting public use" doctrine.

Public uses of railroads fell out of practice when the federal courts granted exclusive use to railroads in 1942 (OB 33, citing *Puett v. Western* 752 P.2d 213, 216 (Nev. 1988). DNR argued that "shifting public uses" had to occur immediately after disuse (PR-DNR 12). The State Court of Appeals claimed petitioner's easements were only easements and not roads (UO 7). Petitioner considered proposing public trail use of such in a cultural assessment plan to protect and use the adjoining county "Pacific Road" if abandonment of the railroad easements was established by the courts.

**G. THE WRIT SHOULD BE GRANTED to Interpret the 1901 Wash. Laws 173 § 1&7 to Find Any Court or Agency Granting Abandonment on Railroad Easements Through State Lands Unlawful and a Violation of Due Process.**

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[34] *Brewer v. Wall*, 769 S.W.2d 753, 756 citing *Contractors, Inc. v. Livingston*, 669 S.W.2d 457 (1984).

[35] *Lawson* 730 P.2d 1308, 1320-321 citing *State es rel. Washington Wildlife Preservation, Inc. v. Minnesota Dep't of Natural Res.*, 329 N.W.2d 543 (Minn.), *cert. denied*, 463 U.S. 1209 (1983).

Simply stated, The 1901 Wash. Laws 173 § 7 (WASH. REV. CODE § 79.36.500, App. K-32) guarantee that all other "grants" of the state shall be subject to the railroad rights of way (OB 5, 13; PR 6; App. L-38). This is the "exclusive" clause or immunity clause petitioner referred to in his briefs (OB 113, PR 8). Black's definition of "grant"[36] is a transfer of title. Black's Law Dictionary reads,

> **grant**, *n.* 1. An agreement that creates a right of any description other than the one held by the grantor.* Examples include leases, easements, charges, patents, franchises, powers, and licenses. 2. The formal transfer of real property. 3. The document by which a transfer is effected; esp., DEED. 4. The property or property rights so transferred.

The establishing of abandonment by a court or DNR is a transfer of title. The lower courts were in error to grant abandonment if such was a violation of due process (OB 43; RB 14; PR 16; MOCD 4, 16). Federal preexisting railroads to the 1896 Enabling Land Grants to Washington State complied with the 1901 Wash. Laws 173 § 1 and payed full market value for their easements (App. L-35). These congressional land-grant roads (13 Stat. 365, 370, 372 (1864), App. H-23) are exempt from abandonment as previously established (certiorari at 18, 19). The state court only interpreted the 1901 Wash. Laws 173 to create

[36] BLACK'S LAW DICTIONARY 707 (7th ed. 1999).

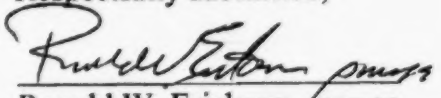
easements and passed on interpreting the "exclusive" or "immunity clause" (WASH. REV. CODE § 79.36.500, OB 44, App. K-32). DNR processing any abandonment on federal land-grant roads through state lands would be a violation of the federal right to regulate its own commerce. Petitioner sought similar due process protection as a legislated right.

## CONCLUSION

Continuance of the present administrative policies and unchallenged abandonment doctrines in the State of Washington will present additional embarrassments in the future for the State and the courts.[37] The decision of this Court could benefit many people and honor the congressional intent to empower a future for light rail development.

For the foregoing reasons, petitioner humbly requests the United States Supreme Court to grant this petition for a writ of certiorari to review the judgment of the Washington State Court of Appeals, Division II.

Respectfully submitted,



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[37] *Rice v. Sioux City Memorial Park Cemetery*, 349 U.S. 70, 79 (1955).

# APPENDIX A

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION II

[Court filing stamp
Dated: May 10, 2005]

RONALD W. ERICKSON, a single person
d/b/a/ RxR DEPOT & RAILROAD COMPANY,
Appellant,

v.

WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES,
Respondent,

OLYMPIC EAGLE, INC.,
WARREN L. STETSON TRUST,
Defendants

No. 31569-6-II
UNPUBLISHED OPINION

BRIDGEWATER, J. -- Ronald W. Erickson appeals summary judgment quieting title to unused, abandoned railroad easements he had purchased from the Washington State Department of Natural Resources (DNR). Erickson purchased these easements from Olympic Eagle, Inc. for $1,500. We hold that because the easements granted to the Chicago Milwaukee Railroad **31569-6-II, Page 2** (Chicago) in 1909 were never developed and were

abandoned, they reverted to DNR; thus, Erickson, as a subsequent grantee, acquired no interest when he purchased them. We affirm.

In 1909, DNR granted Chicago easements over several sections of state land south of Forks, Washington. Chicago never developed the easements into a railroad or laid any tracks on any of the DNR easements. It also did not acquire right-of-ways over intervening private tracts of land that connected the DNR easements to create a rail corridor. During the 1920s, Highway 101 was built parallel to the DNR easements.

Chicago filed for bankruptcy in 1977. 45 U.S.C. §§ 904 and 915(a) (1987) (Milwaukee Railroad Restructuring Act) authorized the reorganization court to abandon Chicago's railroad lines. Under the bankruptcy reorganization plan, Chicago sold its operating lines to another railroad. It also sold off some of its non-operating right-of-ways in Washington to non-rail companies. Jefferson County foreclosed on one of Chicago's easements located in Section 16 because of failure to pay taxes on the easement. The Jefferson County Treasurer's Office notified DNR that the property taxes on the easements were unpaid and invited DNR to attend the tax foreclosure sale. DNR told the treasurer's office that the right-of-ways were easements that it had granted to Chicago and that it was the fee owner. The treasurer's office dropped the easements

from its foreclosure sale.

Chicago conveyed the DNR easements to Olympic Eagle and the Warren L. Stetson Trust, by quitclaim deeds. Chicago stopped paying property taxes on the easements. Olympic Eagle acquired the quitclaim deed in order to harvest the timber within the right-of-ways, but it was not engaged in any rail activities. **31569-6-II, Page 3**

Olympic Eagle held the deeds until 1998, when it conveyed the remaining interest to Ronald Erickson for $1,500. On the real estate excise tax affidavit, the Jefferson County Assessor's Office noted that the right-of-ways had already been removed from the tax rolls based on advice from the prosecuting attorney.

In September 2003, Erickson sued DNR, Olympic Eagle, and the Warren L. Stetson Trust to quiet title, for declaratory and injunctive relief, and for damages. On January 16, 2004, DNR moved for summary judgment. In its motion, it asked the trial court to quiet title in the properties in DNR and to dismiss the remainder of Erickson's claims. The trial court granted DNR's motion. Erickson appeals.[1]

## I. Standard of Review

We review an order of summary judgment de novo. *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 483, 78 P.3d 1274

[1] Olympic Eagle and the Warren L. Stetson Trust are not parties in this appeal.

(2003). We perform the same inquiry as the trial court: reviewing the facts and reasonable inferences drawn from them in the light most favorable to the nonmoving party. *Smith*, 150 Wn.2d at 483; *Goad v. Hambridge*, 85 Wn. App. 98, 102, 931 P.2d 200, *review denied*, 132 Wn.2d 1010 (1997). Summary judgment is appropriate only if no genuine issue of material fact exists and the moving party is entitled to a judgment as a matter of law. CR 56(c). We grant the motion only if, from all the evidence, reasonable persons could reach but one conclusion. *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wn.2d 622, 630-31, 71 P.3d 644 (2003). **31569-6-II, Page 4**

II. DNR's Declarations

Erickson argues that there were insufficient facts to support statements made in some of DNR's affidavits, but Erickson failed to object to the affidavits DNR submitted in support of its motion for summary judgment. Where a party fails to object or moves to strike before entry of summary judgment, the party is deemed to have waived any deficiency in the affidavit. *Lamon v. McDonnell Douglas Corp.*, 91 Wn.2d 345, 352, 588 P.2d 1346 (1979). Nothing in the record shows that Erickson objected or moved to strike any portion of DNR's affidavits. Thus, he waived this argument.

III. The Law of Abandonment

Erickson next argues that the trial court erred when it

applied abandonment theory to the easements. He contends that evidence of nonuse is insufficient to show abandonment.

Five right-of-ways are at issue. The Laws of Washington 1901, chapter 173, granted right-of-ways to railroad companies. The legislature called these right-of-ways easements. Laws of Washington 1901, ch. 173 § 7.

In Washington, when a railroad easement ceases to exist, it is abandoned. *Morsbach v. Thurston County*, 152 Wash. 562, 568-69, 278 P. 686 (1929). Abandonment is determined by looking at several factors to infer intent. J.A. Connelly, Annotation, *What Constitutes Abandonment of a Railroad Right of Way*, 95 A.L.R.2d 468, 470 (1964). Generally, courts do not find abandonment merely due to nonuse. *Netherlands Am. Mortgage Bank v. E. Ry. & Lumber Co.*, 142 Wash. 204, 208, 252 P. 916 (1927). There are, however, situations where courts have found abandonment due to nonuse when other evidence shows intent to abandon the right-of-way. *Zobrist v. Culp*, 95 Wn.2d 556, 562, 627 P.2d 1308 (1981). **31569-6-II, Page 5**

When a railroad abandons an easement, the right of possession reverts to the landowner. *Roeder Co. v. Burlington N., Inc.*, 105 Wn.2d 567, 571, 716 P.2d 855 (1986). If a subsequent grantee acquires the deed after the easement is abandoned, the grantee acquires nothing. *Roeder Co.*, 105 Wn.2d at 571. Thus, the easements in this

case reverted back to the DNR when Chicago abandoned them. *Hanson Indus., Inc. v. Spokane County.*, 114 Wn. App. 523, 536, 58 P.3d 910 (2002), *review denied*, 149 Wn.2d 1028 (2003).

Here, several factors besides nonuse support a finding that Chicago abandoned its easements. First, Chicago never established a rail corridor or developed a rail line.

Furthermore, Chicago failed to acquire rights over other intervening private lands. The intervening lands were necessary to link up the easements into a rail corridor. Also, Highway 101 was constructed parallel to the easements in the 1920s.

Finally, rather than keep the easements, Chicago sold them to Olympic Eagle, a timber company. Chicago allowed Jefferson County to foreclose an easement located in Section 16 by failing to pay taxes on it. Jefferson County notified DNR that it planned to sell other DNR easements at a tax foreclosure sale. In order to avoid the foreclosure sale, Chicago sold its five remaining parcels.

In other jurisdictions, conveying a public easement for a private use abandons the easement. *Brewer and Taylor Co. v. Wall*, 299 Ark. 18, 769 S.W.2d 753, 756 (1989). Similarly here, nothing suggested that Olympic Eagle intended to use the easements for rail activities. In fact, Christina Nyhus, Olympic Eagle's vice president, declared

that the company had no intent to use the easements for railroad purposes. **31569-6-II, Page 6**

Erickson also asserts that RCW 81.36.070 authorized the sale of the right-of-way by Chicago to Olympic Eagle. But RCW 81.36.070 only authorizes the sale of a railroad to another railroad. Olympic Eagle was a timber company and not a railroad. Thus, RCW 81.36.070 is inapplicable.

Further, RCW 84.12.310 does not provide that railroads can keep an unused railroad right-of-way. Chapter 84.12 RCW deals with assessment and taxation of public utilities. RCW 84.12.310 states:[,]

> For the purpose of determining the system value of the operating property of any such company, the department of revenue shall deduct from the true and fair value of the total assets of such company, the actual cash value of all nonoperating property owned by such company. For such purpose the department of revenue may require of the assessors of the various counties within this state a detailed list of such company's properties assessed by them, together with the assessable or assessed value thereof: PROVIDED, That such assessed or assessable value shall be advisory only and not conclusive on the department of revenue as to the value thereof.

This statute only addresses the tax assessment of property held by interstate utilities. It does not discuss the legal right to either [sic] hold or abandon nonoperating rail easements. Erickson's reliance on this statute is misplaced.

The evidence establishes a long period of nonuse and

several actions Chicago took supporting abandonment of the easements. Thus, the trial court did not err when it applied the law of abandonment and granted summary judgment for DNR.

IV. Franchise Law

Erickson asserts that the Laws of 1901, chapter 173 created a franchise in favor of Chicago and that the franchise could not be abandoned without legislative consent. We disagree. **31569-6-II, Page 7**

A franchise is "the right granted by the state or a municipality to an existing corporation or to an individual to do certain things which a corporation or individual otherwise cannot do." *Wash. Water Power Co. v. Rooney*, 3 Wn.2d 642, 649, 101 P.2d 580 (1940) (quoting EUGENE MCQUILLIN, MUNICIPAL CORPORATIONS, § 1740 (2d ed. 1943)). In contrast, an easement is a privilege granted to use another's land in a specific manner. *State ex rel. Shorett v. Blue Ridge Club*, 22 Wn.2d 487, 494, 156 P.2d 667 (1945). The Laws of 1901, chapter 173 granted only easements in the land and nothing more.

Erickson's reliance on *State ex rel. Grinsfelder v. Spokane St. Ry. Co.*, 19 Wash. 518, 53 P. 719 (1898), is misplaced. That case dealt with street franchises and is inapplicable to the easements granted under the Laws of 1901, chapter 173.

Erickson also has no claim to the timber located on the easements. The easements at issue in this case encumbered state trust lands. The federal government conveyed these trust lands to the state under the Enabling Act when Washington was admitted as a state. 25 Stat. 676 (1889) [25 Stat. 180 (1989) at 676]. The legislature granted Chicago a right to use the easements for rail-related activities. Those activities included the harvesting of timber. However, once Chicago abandoned the easements, it abandoned any incidental rights to timber that went with the easements, since the land and all incidental rights reverted back to the DNR.

V. Inapplicable Statutes / Unreviewable Issues

Erickson directs our attention to several statutes, RCW 47.30.070, RCW 79.36.400, RCW 47.76.240, and county vacation statutes. None of these statutes pertain to his claim. The grant to Chicago was an easement; it was not intended to be a public highway and the railroad was never constructed for the public's [sic.] benefit. **31569-6-II, Page 8**

Erickson raises the following issues for the first time on appeal: (1) the constitutionality of RCW 34.05.010(3)(c); (2) whether the Chicago right-of-ways are entitled to cost-free highway crossings; (3) whether he is entitled to a finder's fee; and (4) whether he is entitled to legal fees under RCW 81.53.190.

RAP 2.5(a) allows appellate courts to review issues raised for the first time on appeal but in order to do so, the issue must fit under one of a limited group of exceptions. Those exceptions are: "(1) lack of trial court jurisdiction, (2) failure to establish facts upon which relief can be granted, and (3) manifest error affecting a constitutional right." RAP 2.5(a). None of Erickson's new issues falls under an exception. Thus, these issues are not properly before this court. *Hernandez v. Dep't of Labor & Indus.*, 107 Wn. App. 190, 199, 26 P.3d 977 (2001).

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

/s/ Bridgewater
Bridgewater, J.

We concur:

/s/ Morgan
Morgan, J.

/s/ Quinn-Brintnall, CJ
Quinn-Brintnall, C.J.

# APPENDIX B

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION II

---

RONALD W. ERICKSON, a single person,
d/b/a RxR DEPOT & RAILROAD COMPANY

Appellant,

v.

WASHINGTON STATE
DEPARTMENT OF NATURAL RESOURCES;

Respondent,

OLYMPIC EAGLE, INC.;
WARREN L. STETSON TRUST,

Defendants.

---

No. 31569-6-II

MANDATE

Jefferson County Cause No. 03-2-00213-4

---

The State of Washington to: The Superior Court of the State of Washington in and for Jefferson County

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on May 10, 2005, became the decision terminating review of

this court of the above entitled case on March 8, 2006. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion. Costs and attorney fees have been awarded in the following amount:

Judgment Creditor, Respondent, State of WA Dept. of Natural Resources, et al, $268.00[;]

Judgment Debtor, Appellant, Ronald W. Erickson, $268.00[.]

[Page 2
Mandate 31569-6-II]

SEAL
(deleted for printing)

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 22nd day of March, 2006.

/s/ David Ponzoha
Clerk of the Court of Appeals
State of Washington, Div. II

Cheryl Ann Nielson
Attorney at Law
Atty Gen Ofc Nat Res Div[.'s]
PO Box 40100
Olympia, WA 98504-0100

Ronald W. Erickson
934 West Lauridsen # 205
Port Angeles, WA 98363

James R. Schwartz
Attorney General's Office
PO Box 40117
Olympia, WA
98504-0117

Hon. Julie Spector, Pro Tem
Jefferson County Superior Court Judge
PO Box 1220
Port Townsend, WA 98368

# APPENDIX C

## THE SUPREME COURT OF WASHINGTON

RONALD W. ERICKSON, a single person,
d/b/a RxR DEPOT & RAILROAD COMPANY

Petitioner,

v.

WASHINGTON STATE
DEPARTMENT OF NATURALRESOURCES;

Respondent,

OLYMPIC EAGLE, INC.;
WARREN L. STETSON TRUST

Defendants.

No. 77447-1
**ORDER**
C/A NO. 31569-6-II

Department II of the Court, composed of Chief Justice Alexander and Justices Madsen, Bridge, Owens, and J. M. Johnson (Justice Fairhurst sat for Justice Bridge, and Justice C. Johnson sat for Justice Owens), considered this matter at its March 7, 2006, Motion Calendar, and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petition for Review is denied.

Dated at Olympia, Washington this 8th day of March, 2006.

For the Court's
/s/ Gerry L. Alexander
Chief Justice

# APPENDIX D

## IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION II

RONALD W. ERICKSON, et al, Appellants,

v.

WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES; et al, Respondents

No. 31569-6-II

ORDER DENYING MOTION TO RECONSIDER

**APPELLANT** moves for reconsideration of the court's decision terminating review, filed **May 10, 2005.** Upon consideration, the Court denies the motion. Accordingly, it is

**SO ORDERED.**

**PANEL:** Jj. Quinn-Brintnall, Morgan, Bridgewater

**DATED** this 22nd day of June, 2005.

**FOR THE COURT:**

/s/ Christinea Sue Quinn-Brintnall
CHIEF JUDGE

Cheryl Ann Nielson
Attorney at Law
Atty Gen Ofc Nat Res Div
PO Box 40100
Olympia, WA 98504-0100

Ronald W. Erickson
934 West Lauridsen # 205
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James R. Schwartz
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9640 Valley View Dr SE
Olympia, WA 98513-6831

# APPENDIX E

**STATE OF WASHINGTON**
**JEFFERSON COUNTY SUPERIOR COURT**

---

RONALD W. ERICKSON,
a single person, d/b/a RxR DEPOT & RAILROAD COMPANY Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF NATURALRESOURCES; OLYMPIC EAGLE, INC.; WARREN L. STETSON TRUST,

Defendants.

---

No.03-2-00213-4

ORDER GRANTING DEPARTMENT OF NATURAL RESOURCES' (DNR'S) MOTION FOR SUMMARY JUDGMENT QUIETING TITLE IN DNR AND DISMISSING ALL REMAINING CLAIMS

CLERK'S ACTION REQUIRED: DISMISSAL OF TRIAL DATE

---

This matter came before the Court on the Defendant's, Washington State Department of Natural Resources' (DNR's), motion for summary judgment quieting to the property described in Exhibit A to this order, dismissing all of Plaintiff's remaining claims, and directing the Clerk of the Court to strike the trial date.

The Court heard oral argument of counsel for the Defendant, James R. Schwartz, and the Plaintiff, Ronald W. Erickson. The Court considered the pleadings filed in this action and the following evidence: Declaration of Jon Luedecker, Declaration of Dean Wilson, the Declaration of Christina Nyhus, and the Declaration of Ronald Erickson.

Based on the argument of counsel and the evidence the Court finds that there are no material facts in dispute regarding ownership of the property and that the Plaintiff is entitled to judgment as a matter of law.

BASED ON THE ABOVE FINDINGS, IT IS ORDERED:

1. DNR's motion for summary judgment is granted.

2. DNR's title to the property legally described on Exhibit A is established and quieted in DNR in fee simple, free and clear of Plaintiff's claim;

3. Plaintiff is forever barred from having or asserting any right, title, estate, lien, or interest in or to the property herein described adverse to DNR;

4. Plaintiff's remaining claims are dismissed with prejudice;

5. DNR is awarded statutory attorney fees in the amount of $125.00; and

6. The Clerk shall strike trial date.

Dated this 20th day of February, 2004.

/s/ J. Spector
Judge

Presented by:
CHRISTINE O. GREGOIR
Attorney General

Signature Dated: Feb. 20, 2004
James R. Schwartz
WSHA no. 20168
Assistant Attorney General
(360) 586-3551

Signature Dated: 2-20-04
Cheryl A. Nielson
WSHA no. 20163
Assistant Attorney General
(360) 586-3551

Attorneys for Defendant
Department of Natural Resources

# APPENDIX F

## STATE OF WASHINGTON
## JEFFERSON COUNTY SUPERIOR COURT

---

RONALD W. ERICKSON, a single person, d/b/a RxR DEPOT & RAILROAD CO.

Plaintiff,

v.

WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES; OLYMPIC EAGLE, INC.; WARREN L. STETSON TRUST,

Defendants.

---

No.03-2-00213-4
ORDER Of DISMISSAL OF TIMBER CLAIM

Date of Hearing:
December 12, 2003
Judge/Department:
The Honorable Thomas J. Majhan
Nature of Motion:
Dismissal

---

This matter came before the Court on the defendant State of Washington, Department of Natural Resources' motion for an order dismissing the timber trespass claim because the Court lacked jurisdiction over the claim. The Court heard the oral argument of plaintiff Ronald W. Erickson and counsel for defendant Cheryl A. Nielson, Assistant Attorney General. The Court considered the

pleadings filed in this action and the Declaration of James Smego.

///

///

Based on the argument of counsel and the evidence presented, the Court finds:

1. The plaintiff's action includes a claim for timber trespass which is an action in tort.

2. The plaintiff has not pled that he filed nor has he filed a tort claim with the Office of Risk Management, as required by RCW 4.92.100 and RCW 4.92.110 before the filing of an action for damages against the state arising out of tortious conduct.

3. The Court has no jurisdiction over the timber trespass claim.

Based on the above findings, It Is Ordered:

1. Defendant's motion is granted.

2. The timber trespass claim is dismissed with prejudice for lack of jurisdiction.

Dated this 12th day of December, 2003.

/s/ Thomas J. Majhan
THOMAS J. MAJHAN, Superior Court Judge

Presented by:

CHRISTINE O. GREGOIR
Attorney General

Signature Dated: 12-12-03
James R. Schwartz
WSHA no. 32236
Assistant Attorney General
(360) 586-3551

Signature Dated: 12-12-03
Cheryl A. Nielson
WSHA no. 32236
Assistant Attorney General
(360) 586-3551
Attorneys for Defendant
Department of Natural Resources

# APPENDIX G

## UNITED STATES CONSTITUTION

**U.S. CONST. Art. 1 § 8, cl. 3** (Commerce Clause)

The Congress shall have power . . . ; To regulate Commerce with foreign nations, and among the several states, and with the Indian Tribes; . . . .

**U.S. CONST. art. I § 8, cl. 4** (Uniform Bankruptcy Laws)

The Congress shall have power . . . to establish . . . uniform laws on the subject of bankruptcies throughout the United States; . . . .

**U.S. CONST. art. 6 § 2.** (Supremacy Clause)

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

**U.S. CONST. amend. XIV, § 1** (Due Process & Equal Protection)

**Section 1.** All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

# APPENDIX H

## U. S. STATUTES AT LARGE

### 13 Stat. 365 (1864) at 370, 372

(An Act Granting Lands . . . by the Northern Route. [Northern Pacific Railroad]).

Sec. 11. *And be it further enacted,* That said Northern Pacific Railroad , or any part thereof, shall be a post route and a military road, subject to the use of the United States, for postal, military, naval, and all other governmental service, . . . .

Sec 20. *And be it further enacted,* That the better to accomplish the object of this act, namely, to promote the public interest and welfare by the construction of said railroad and telegraph line, and keeping the same in working order, and to secure to the government at all times (but particularly in the time of war) the use and benefits of the same for postal, military and other purposes, Congress may, at any time, having due regard for the rights of said Northern Pacific Railroad Company, add to, alter, amend or repeal this Act.

### 25 Stat. 180 (1889) at 676

(Enabling Act)

AN ACT to provide for the division of Dakota into two States and to enable the people of North Dakota, South

Dakota, Montana, and Washington to form constitutions and State governments and to be admitted into the Union on an equal footing with the original States, and to make donations of public lands to such States.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled . . . .*

SEC. 2. . . . SEC. 3. . . . SEC. 4. . . . SEC. 5. . . .
SEC. 6. . . . SEC. 7. . . . SEC. 8. . . . SEC. 9. . . .

SEC. 10. That upon the admission of each of said States into the Union sections number sixteen and thirty-six in every township of said proposed States . . . Provided, That the sixteenth and thirty-sixth sections embraced in permanent reservations for national purposes shall not, at any time, be subject to the grants nor to the indemnity provisions of this act, **nor shall any lands** (emphasis added) embraced in Indian, military, or **other reservations of any character** (emphasis added) be subject to the grants or to the indemnity provisions of this act until the reservation shall have been extinguished and such lands be restored to, and become a part of, the public domain.

Sec 11. That all lands here in granted for educational purposes shall be disposed of only at public sale . . . .

(Approved February 22, 1889.) [25 U.S. Statutes at Large ch. 180 p 676.]

# APPENDIX I

## UNITED STATES CODE

### 11 U.S.C. § 554 (1986) Abandonment of property of the estate.

(a) After notice and a hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(b) On request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

(c) . . . .

(d) Unless the court orders otherwise, property of the estate that is not abandoned under this section and that is not administered in the case remains property of the estate.

### 11 U.S.C. § 1174 (1978) Liquidation.

On request of a party in interest and after notice and a hearing, the court may, or, if a plan has not been confirmed under section 1173 of this title before five years after the date of the order for relief, the court shall, order the trustee to cease the debtor's operation and to collect and reduce to money all of the property of the estate in the same manner as

if the case were a case under chapter 7 of this title.

## 28 U.S.C. § 1257 (1988) State courts; certiorari.

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

## 45 U.S.C. §§ 903, 904 (1979)

(Full text deleted for printing).

## 45 U.S.C. § 915(d) (1983) Authority of bankruptcy court.

The authority of the bankruptcy court to authorize abandonments, sales, and transfers of lines of the Milwaukee Railroad shall be governed by the provisions of section 904 of this title, rather than the provisions of this section.

## 49 U.S.C. § 22301 (1993) Light density rail line pilot projects.

(a) GRANTS. -- The Secretary of Transportation may make grants to States that have State rail plans described in section 22102(1) and (2), to fund pilot projects that demonstrate the relationship of light density railroad services to the statutory responsibilities of the Secretary, including those under title 23.

(b) LIMITATIONS. -- Grants under this section may be made only for pilot projects for making capital improvements to, and rehabilitating, publicly and privately owned rail lines structures, and may not be used for providing operating assistance.

(c) PARIVATE OWNER CONTRIBUTIONS. -- Grants made under this section for projects on privately owned rail line structures shall include contributions by the owner of the rail line structures, based on the benefit to those structures, as determined by the Secretary.

(d) STUDY. -- The Secretary shall conduct a study of the pilot projects carried out with grant assistance under this section to determine the public interest benefits associated with the light density railroad networks in the States and their contribution to a multimodal transportation system. Not later than March 31, 2003, the Secretary shall report to Congress any recommendations the Secretary considers

appropriate regarding the eligibility of light density rail networks for Federal infrastructure financing.

(e) AUTHORIZATION OF APPROPRIATIONS. -- There are authorized to be appropriated to the Secretary to carry out this section $17,500,000 for each of the fiscal years 1998, 1999, 2000, 2001, 2002, and 2003. Such funds shall remain available until expended.

(Added Pub. L. 105-178, title VII, § 7202(a), June 9, 1998, 112 Stat. 470.)

# APPENDIX J

## Transportation Equity Act for the 21st Century

### (A Summary Overview)

On June 9, 1998, the President signed into law PL 105-178, the Transportation Equity Act for the 21st Century (TEA-21) authorizing highway, highway safety, transit and other surface transportation programs for the next six years. Subsequent technical corrections in the TEA 21 Restoration Act have been incorporated; thus, the material presented here reflects the combined effects of both Acts and the two are jointly referred to as TEA-21.

TEA-21 builds on the initiatives established in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), which was the last major authorizing legislation for surface transportation. This new Act combines the continuation and improvement of current programs with new initiatives to meet the challenges of improving safety as traffic continues to increase at record levels, protecting and enhancing communities and the natural environment as we provide transportation, and advancing America's economic growth and competitiveness domestically and internationally through efficient and flexible transportation.

Significant features of TEA-21 include:

- Assurance of a guaranteed level of Federal funds for

surface transportation through FY 2003. The annual floor for highway funding is keyed to receipts of the Highway Account of the Highway Trust Fund (HTF). Transit funding is guaranteed at a selected fixed amount. All highway user taxes are extended at the same rates [as] when the legislation was enacted.

- Extension of the Disadvantaged Business Enterprises (DBE) program, providing a flexible national 10 percent goal for the participation of disadvantaged business enterprises, including small firms owned and controlled by women and minorities, in highway and transit contracting undertaken with Federal funding.

- Strengthening of safety programs across the Department of Transportation (DOT). . . . These new incentive funds also offer added flexibility to States since the grants can be used for any Title 23 U.S.C. activity.

- Continuation of the proven and effective program structure established for highways and transit under the landmark ISTEA legislation. Flexibility in the use of funds, emphasis on measures to improve the environment, focus on a strong planning process as the foundation of good transportation decisions—all ISTEA hallmarks—are continued and enhanced by TEA-21. New programs . . . target special areas of national interest and concern.

- Investing in research and its application to maximize the

performance of the transportation system. Special emphasis is placed on deployment of Intelligent Transportation Systems to help improve operations and management of transportation systems and vehicle safety.

## Rail Programs

### Magnetic Levitation Transportation Technology Deployment Program (MAGLEV)

Contract authority totaling $60,000,000 is authorized for FYs 1999-2001 to fund nationally significant projects that will demonstrate the feasibility and safety of transportation systems employing magnetic levitation. Of this amount, $15,000,000 will be set aside for discretionary grants for the research and development of low-speed superconductivity MAGLEV technology for public transportation in urban areas. An additional $950 million in budget authority is authorized, but must first be appropriated by Congress. STB and Congestion Mitigation and Air Quality funding may also be used. After soliciting applications for eligible projects from the States, the Secretary will select one or more projects to receive assistance for preconstruction planning activities. Upon completion of preconstruction planning activities for all selected projects, the Secretary will select one project to receive financial assistance for final design, engineering, and construction activities.

# APPENDIX K

## REVISED CODE OF WASHINGTON

**WASH. REV. CODE § 4.04.010 (1891)** Extent to which common law prevails

The common law, so far as it is not inconsistent with the Constitution and laws of the United States, or of the state of Washington nor incompatible with the institutions and conditions of society in this state, shall be the rule of decision in all the courts of this state.

[1891 c 17 § 1; Code 1881 § 1; 1877 p 3 § 1; 1862 p 83 § 1; RRS § 143. Formally RCW 1.12.030.]

**WASH. REV. CODE § 79.36.500 (2003)** Railroad right of way - Certificate

Upon full payment of the appraised value of any right of way for a railroad and of damages to state lands affected, the department shall issue to the railroad company applying for such right of way a certificate in such form as the department may prescribe, in which the terms and conditions of said easement shall be set forth and the lands covered thereby described, and any future grant, or lease, by the state, of the lands crossed or affected by such right of way shall be subject to the easement described in the certificate.

[2003 c 334 § 390, eff. July 27, 2003. 1927 c 255 § 91; RRS

§ 7797-91, Prior: 1915 c 147 § 14; 1901 c 173 § 7. Formally RCW 79.36.140, 79.01.364.]

**WASH. REV. CODE § 81.36.040 (1961)** Line or canal across or along watercourses

Every corporation formed under the laws of this state for the construction of railroads or canals shall possess the power to construct its railway or canal, as the case may be, across, along or upon any river, stream of water, watercourses, plank road, turnpike or canal, which the route of such railway or canal shall intersect or touch; but such corporation shall restore the river, stream, watercourse, plank road or turnpike thus intersected or touched to its former state as near as may be, and pay any damages caused by such construction: PROVIDED, . . . .

[1961 c 14 § 81.36.040. Prior: 1895 c 80 § 4; 1888 p 64 § 3; RR § 10536.]

# APPENDIX L

## WASHINGTON STATE LAWS

## 1901 Wash. Laws 173

**Laws of 1901**
**Chapter CLXXIII** [173] p. 353

Granting Rights-Of-Way To Railroad Companies Over State Land.

*An act granting rights-of-way to railroad companies over the lands of the State of Washington, and providing for the appraisement and disposition of the lands included within and used for such rights-of-way, and declaring an emergency.*

*Be it enacted by the Legislature of the State of Washington:*

Section 1. That a right of way through over and across the public lands of the State of Washington, except tide lands, harbor areas and shore lands, is hereby granted to any railroad company duly organized under the laws of any state or by the Congress of the United States to any extent not exceeding fifty feet on each side of the center line of said railroad now constructed or hereafter to be constructed. In order to obtain the benefits of this grant as to any railroad hereafter to be constructed, the company constructing or proposing to construct such **road** [emphasis added]shall file with the Board of State Land Commissioners a copy of its

articles of incorporation, due proofs of organization thereunder [sic.], a map or maps accompanied by the field notes or the survey to the state as hereinafter provided the amount of the appraised value of said lands affected by, used for or included within said right-of-way. In order to obtain the benefits of this grant as to any railroad **now constructed the company owning such road** [emphasis added] shall file with the Board of State Land Commissioners a list of the lands affected by, used for or included within such right-of-way, and shall pay to the state as hereinafter provided the amount of the appraised value of said lands affected by, used for or included within said right-of-way.

Sec. 2. That all lands of this state over which a right-of-way of any railroad company may now or hereafter be located shall be classified and appraised as hereinafter provided, and the State Board of Land Commissioners shall constitute and serve as the board of appraisers mentioned in section 2 of article XVI of the constitution of this state.

Sec 3. That upon the filing of said list or maps by said company as herein provided, said Board of State Land Commissioners are [sic] hereby authorized and directed to ascertain and classify the lands affected by, to be used for and included within the aforesaid right-of-way, and shall thereupon fix the price per acre for each lot or block, quarter section and subdivision thereof, less the improvements, if any, so affected by, used for and included within said right-

of-way, which price shall be the full market value thereof but not to be less than ten dollars per acre.

Sec. 4. That should any improvements made as of right and with license from the State of Washington be upon any of such lands at the time of said appraisement, the state board shall separately appraise the same together with the damage and waste done to said lands by the use and occupancy of the same or to adjacent lands and after deducting from the amount of the appraisement for improvements the amount of such damage and waste the balance shall be determined and regarded as the value of said improvements, and the railroad company if not the owner of such improvements shall deposit with the State Treasurer through the Commissioner of Public Lands the value of the same as [shown] by said appraisement within thirty days next following the date thereof. That where said right-of-way affects the improvements of any person other than [ the person ] owning said improvements or entitled thereto under existing law, the applicant for said right-of-way shall file with the Commissioner of Public Lands a valid release of damages duly executed by such person or persons, or a certified copy of a judgment of a court of competent jurisdiction showing that the damages resulting to such person or persons, ascertained in accordanee [accordance] with existing law, has been made or paid into the registry of such court.

Sec. 5. When said appraisement is made it shall be recorded in the proceedings of said Board of State Land Commissioners and the evidence or report upon which the same is based shall be preserved of record in the office of the Board of State Land Commissioners and the Commissioner of Public Lands shall prepare a certificate of said appraisement in duplicate, one of which he shall file in his office and the other transmit to the auditor of the county in which the lands affected by said rights-of-way is situate shall be forthwith served with notice of appraisement. A copy of said appraisement shall be forthwith filed with the board of county commissioners of any county in which the land is situate[d].

Sec. 6. Within thirty days after the appraisement of said lands, as aforesaid, the board of county commissioners of any county is which the right-of-way is situated, or any person, company or corporation may appeal from the same to the Superior Court of the county in which the right-of-way affected by the appeal is situate[d], but if the applicant is the party appealing, he or it must deposit the amount of the appraisement in the registry of the court to which the appeal is taken. All appeals shall be heard and determined by the court *de novo*. The taking of an appeal shall not prevent the use of the land affected thereby for right-of-way purposes during the prosecution of the appeal. All costs on appeal shall be paid by the applicant.

Sec. 7. That upon full payment of the value of such easements ascertained as aforesaid, **any future grant** [emphasis added] or lease by the state of the lands affected by said right of way **shall be subject to the easements** [emphasis added] obtained under the provisions of this act.

Sec. 8. Nothing contained in this act shall be deemed to in any way conflict with any existing law of this state relating to the method by which railroad companies may acquire rights of way. No pending condemnation proceeding nor right claimed therein shall be affected in any way by the provisions of this act.

Sec. 9. An emergency exists and this act shall take effect immediately.

Passed the Senate March 12, 1901.
Passed the House March 14, 1901.
Approved by the Governor March 18, 1901.

# APPENDIX M

## COURT RULES

### Fed. R. Civ. P. § 52 (a) (1995).

(a) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon . . . Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. . . .

### Fed. R. Bankr. P. § 3007 (1991). Objections to Claims.

An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

### Bankr. N. D. Ill. LBR Rule 3007-1 (1978). CLAIMS-OBJECTIONS*
### (a) Objection.

(1) An objection to the allowance of a claim shall identify

the claimant by name and clerk's docket number and shall include the following:

(A) Notice that if the claimant fails to timely file a written response that:

(i) the court may rule on the pleadings filed without oral argument and without further notice to the claimant; and

(ii) that the claimant will be deemed to have consented to such a determination by the court in accordance with LBR 3007 (b)(2) (B);

**(b) Response**

(2) no Response Filed.

(B) Failure by the claimant to file a response shall be deemed as consent to have the court consider and determine the issue on the pleadings without oral argument.

* Although this is found to be the wording of the local rules for other bankruptcy courts it is not substantiated at time of printing to be the exact wording of the 1987 Ill. BANKR. CT.

# APPENDIX N

## IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

---

IN THE MATTER OF
Chicago, Milwaukee, St. Paul and Pacific Railroad Company
Debtor.

---

In Proceedings for the Reorganization of a Railroad
No. 77 B 8999
Prentice H. Marshall, Judge

---

ORDER NO. 866

Final Decree

Upon consideration of the Trustee's Motion for Entry of a Final Decree, filed pursuant to the Trustee's Modified 1898 Plan of Reorganization (the "Plan"), due notice having been given to creditors, stockholders and other parties in interest, the Court, acting as a Court of Reorganization for the Debtor pursuant to Section 77 of the Bankruptcy Act of 1989, as amended ("Section 77"), finds and concludes as follows:

1.... 2.... 3.... 4.... 5.... 6.... 7.... 8.... 9....

NOW, THEEFORE, IT IS ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1.... 2.... 3.... 4.... 5....

6. On the Consummation Date all right, title and interest of the Trustee in the property of the Estate shall vest in and become the absolute property of the Reorganized Company, notwithstanding the laws of any state or the decision or order of any state authority to the contrary. Except as otherwise provided in this Order or in the Plan, the Reorganized Company shall take the property free and clear of all claims, rights, demands, interests, liens and encumbrances of every kind and character. The Trustee is authorized and directed to execute and deliver to the Reorganized Company a deed and a bill of sale transferring all of the property of the Estate. The form of those instruments shall be determined by the Trustee. All property and funds of the Estate held by persons other than the Trustee shall be delivered or paid over to the Reorganized Company, except (i) the Segregated Account and (ii) escrow accounts pertaining to Tax Benefit Transfer Leases which run in favor of the lessor.

7.... 8.... 9.... 10.... 11.... 12.... 13.... 14....

Dated: November 12, 1985.

Enter:
/s/ Prentice H. Marshall
District Judge

(Seal of U.S. District Court and declaration deleted for printing)

# APPENDIX O

## *Erickson v. DNR*
## Some Brief References To Bankruptcy Laws

### Clerk Papers

Chicago Bankruptcy Court's Final Decree (CP 54), (APP. N-41).

### Opening Brief for Appellate Court

Erickson cited the bankruptcy chain of title (OB 4).

Erickson claimed that "The order of the bankruptcy court was to transfer all property to the company emerging from the reorganization (CP 47-54). DNR's improper inferences is that Erickson's rr rs/w [railroad rights of way] were sold and not transferred to the trustee of the bankruptcy court." (OB 8). Erickson argued a case on point, Paige v. Schenectady R. Co., 178 N.Y. 102, 70 N.E. 213 (1904) where a rail service went into foreclosure. The rail line was declared abandoned by the city counsel yet later sold and declared unauthorized abandonment and reversed (OB 11). Erickson argued similarity as his ". . . rail rights . . . survived bankruptcy; and property was transferred after a presumed abandonment." (OB 11, 12).

Erickson had cited the esteemed Honorable Judge Story saying, ". . . abandonment ought not to be presumed in a case in which the deliberate purpose of the state to abandon it does not appear (Charles 36 U.S. at 420, app. Q-18)." (OB 24).

## Response Brief for DNR

DNR again affirmed that Chicago sold RR [railroad] to Olympic Eagle, Inc. and Warren L. Stetson Trust, and they sold to Erickson (RB-D 4, 11). DNR argued, "Chicago's failure to acquire the interconnecting rights of ways combined with the construction of a nearby highway is compelling evidence of Chicago's intent to abandon its right to create a rail corridor over these DNR easement many decades ago" (RB-D 9). DNR also asserted that, "Chicago could abandon such easements when it no longer intended to use the easements for the stated purpose, since the federal court had already approved the disposition" (RB-D 27). "The DNR easements had been abandoned by Chicago [when] put up for auction due to non-payment of taxes . . . indicating that abandonment had occurred (C.P. 117)" (RB-D 29-30).

## Reply Brief for Erickson

Erickson referred to Chicago's prior bankruptcies in 1912, 1927, and 1945 (RB 22). Also that the bankruptcy assigned Chicago's interests to "CMC Real Estate Corp. who sold RR [railroad] property" (RB 12).

Erickson argued that, "Pre-bankruptcy abandonment claims are not valid after bankruptcy as all property and franchises survive a bankruptcy (Detroit 184 U.S. at 395, app r-29), and is subject only to the people or court (Paige 70 N.E. at 217, OB at 12, Northern 35 L.Ed 1097, app r-30).

This is true of the Milwaukee bankruptcy (CP at 54, app r-31)." (RB 14).

"The federal court transferred RR rs/w [railroad rights of way] ownerships in the 1912, 1927, and 1945 bankruptcies (CP 22, 23 denied by Resp CP 31). The court authorized the disposition of RR [railroad] assets under section 77 of the Bankruptcy Act (CP 113), and the 1985 Final Decree of Milwaukee's bankruptcy vested all its property to the new **"reorganized company, notwithstanding the laws of any state or the decision or order of any state authority to the contrary"** (EA, CP 54). ABAN[ONMENT] must harmonize with federal laws (RCW 4.04.010). The RR rs/w [railroad rights of way] are **not** abandoned (SB at 27)" (RB 22).

## WASHINGTON STATE SUPREME COURT

## Petition for Review

Erickson asserted that, "the complication is that Erickson's easements were NOT acquired by a 'threat of condemnation' but created by state statute using the word 'road' and an 'exclusive clause;' AND declared an asset and sold by a federal court." (PR 7). Erickson also said:

> The federal government did not give to any state court the right to dissolve corporate assets. By federal preemption the ICC and reorganized court have EXCLUSIVE authority to dispose of rail service and PROPERTY they determine as railroad assets, CP at 54, Matter of Boston and

> Maine Corp. C.A.1 (Mass) 1070, 506 R.2d 2 (1979) at 5. Here the state of New Hampshire attempted to keep a railroad service and property the ICC and reorganized court authorized abandonment. The court found they should have settled title ownership questions in reorganized proceedings, Matter at 7. The state lacked authority and was too late to reverse the federal action. (PR 7).

The implication was that DNR was too late to assert abandonment after the court declared such assets and sold such. "Federal law preempts the state court findings, Matter at 5." (PR 12).

## DNR's Response to Petition for Review

DNR asserted that no "decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or . . . significant question of law under the Constitution of the State of Washington or of the United States is involved." (RB-PR 6). DNR also asserted that "The trial court, however, ruled that Chicago had abandoned its rights under the various easements before DNR took any actions." (RB-PR 8). DNR stated that "Chicago was free to sell its assets as authorized by the bankruptcy court. Had the railroad right-of-way been a fee asset, Olympic Eagle would have acquired the fee. The right-of-way, however, was only an abandoned easement. As a result, Olympic Eagle acquired nothing by the quitclaim deed (case omitted). There is no constitutional issue here." (PR-D 10).

# APPENDIX P

## Chicago Milwaukee Railroad Rights of Way Through State Lands.

*State DNR Record's Dept.*

| Item # | Certificate # | Section | Township | Range | Acres | County |
|---|---|---|---|---|---|---|
| # 1. | # 78 | 36 | 21 | 4 | 6.055 Acres | King |
| # 2. | 87 | 30 | 23 | 9 E | 7.18A | King |
| # 3. | 88 | 16 | 22 | 10 E | 12.39A | King |
| 4. | 89 | 36 | 23 | 8 E | 14.20A | King |
| 5. | 90 | 16 | 22 | 6 E | 6.52A | King |
| 6. | 91 | 36 | 24 | 41 E | 7.34A | Spokane |
| 7. | 92 | 36 | 16 | 23 E | 12.46A | Douglas |
| 8. | 93 | 16 | 17 | 35 E | 9.18A | Adams |
| 9. | 94 | 36 | 16 | 24 | 12.12 2/9/1909 | Douglas |
| 10. | 97 | 38 | 17 | 29 E | 0.54A | Canceled |

| | | | | | |
|---|---|---|---|---|---|
| 11. | 105 | 16 | 18 | 38 E | 11.58A |
| Canceled | | | | | |
| 12. | 106 | 36 | 17 | 32 E | 4.18A |
| Canceled | | | | | |
| 13. | 107 | 16 | 17 | 20 E | 15.84A |
| Canceled | | | | | |
| 14. | 108 | 16 | 17 | 33 E | 11.98A |
| Canceled | | | | | |
| 15. | 109 | 16 | 17 | 30 E | 14.00A* |
| Douglas | | | | | |
| 16. | 113 | 30 | 16 | 25 E | 11.78A |
| Douglas | | | | | |
| 17. | 114 | 36 | 16 | 25 | 6.77A |
| Douglas | | | | | |
| 18. | 116 | 36 | 18 | 36 E | 0.34A |
| Adams | | | | | |
| 19. | 117 | 16 | 17 | 31 E | 12.60A |
| Adams | | | | | |
| 20. | 118 | 16 | 37 | 16 | 10.29 |
| Adams | | | | | |
| 21. | 125 | 16 | 17 | 20 E | 15.84A |
| Canceled | | | | | |
| 22. | 126 | 36 | 17 | 29 E | .54 |
| Douglas | | | | | |
| 23. | 127 | 16 | 18 | 38 E | 11.58A |
| Canceled | | | | | |
| 24. | 128 | 16 | 17 | 35 E | 11.98A |
| Canceled | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| 25. Whitman | 131 | 36 | 20 | 44 E | 2.70A |
| 26. Adams | 147 | 16 | 17 | 34 E | 12.15A |
| 27. Douglas | 148 | 6 | 15 | 27 | 12.6A |
| 28. Whitman | 156 | 16 | 20 | 45 E | 0.18A |
| 29. Spokane | 157 | 36 | 21 | 45 E | 19.98A |
| 30. Douglas | 158 | 4 | 16 | 27 E | 14.30A |
| 31. King | 159 | 14 | 22 | 7 E | 7.07A |
| 32. King | 166 | 16 | 22 | 7 E | 8.91A |
| 33. Kittitas | 167 | 36 | 21 | 12 E | 7.50A |
| 34. Kittitas | 176 | 16 | 17 | 20 E | 15.29A |
| 35. Douglas | 179 | 36 | 16 | 26 E | 6.59A |
| 36. Douglas | 186 | 36 | 16 | 24 E | 18.80A |
| 37. Adams | 193 | 16 | 18 | 38 E | 13.44A |

38. 194 16 17 33 E 2.60A
Adams

39. 208 29 29 13 W 4.93A
Clallam

40. 219 16 17 23 E 12.80A
Kittitas

41. 226 16 27 12 W 26.82A
Jefferson

42. 235 3 27 13 W 0.55A
Jefferson
included 2 27 13 W 9.94A
Jefferson

43. 236 28 27 12 W 7.96A
Jefferson

44. 237 33 28 13 W 3.31A
Clallam

45. 238 34 28 13 W 4.56A
Clallam

46. 239 27 27 12 W 10.49A
Jefferson

47. 240 21 27 12 W 19.76A
Jefferson

48. 243 36 18 11 W 10.64A
Grays Harbor

49. 245 36 18 11 W 10.64A
Canceled

50. 250 36 18 18 E 0.03A
Kittitas (within Ellensburg City Limits)

| | | | | | |
|---|---|---|---|---|---|
| 51. Chehalis | 251 | 36 | 20 | 11 W | 11.88A |
| 52. Clallam | 252 | 16 | 30 | 14 W | 12.74A |
| 53.? Adams | 254 | 16 | 20 | 33 E | 6.09A |
| 54. Snohomish | 261 | 16 | 29 | 5 E | 0.73A |
| 55. Thurston | 262 | 14 | 16 | 3 W | 0.869A |
| 56. Adams | 263 | 16 | 20 | 31 E | 6.11A |
| 57. Adams | 264 | 16 | 20 | 34 E | 15.64A |
| 58. Benton | 265 | 16 | 13 | 27 E | 13.56A |
| 59. Grant | 272 | 36 | 13 | 27 E | 18.17A |
| 60. Spokane | 274 | 16 | 20 | 30 E | 0.16A |
| 61. King | 279 | 36 | 23 | 8 E | 11.81A |
| 62. Benton | 280 | 6 | 13 | 26 E | 2.42A |
| 63. Benton | 281 | 12 | 13 | 24E | 12.22A |

64. 282 10 13 25 E 12.93A
Benton

65. 289 26 14 26 E 6.63A
Benton

66. 290 8 13 25 E 11.96A
Benton

67. 291 30 14 27 E 5.83A
Benton

68. 292 ? 16 17 21 2.45
Kittitas

69. 294 ? 36 17 22 0.11
Kittitas

70. 295 16 20 35 E 18.03A
Adams

71. 308 30 18 36 E 2.10A
Adams

72. 324 16 29 5 E 0.73A
Snohomish

73. 325 6 13 26 E 13.40A
Benton

74. 328 22 2 27 E 16.565A
King

75. 336 36 20 14 E 13.67A
Kittitas

Total Acquisitions: 75 TOTAL ACRES 713 (about)
(about 27 acres to the linear mile)

# APPENDIX Q

## Federal Railroad Rights of Way Through State Lands List (incomplete)

(Northern Pacific & Great Northern)
State DNR Record's Dept.

| County | # | Buyer | Section | Twsp | Range | Acres | Date |
|---|---|---|---|---|---|---|---|
| King | 1 | NPRC | 36 | 22 | 4 E | 2.53 | 3/26/02 |
| " | " | " | 36 | 21 | 4 E | / | |
| Whatcom | 11 | NPRC | 26 | 20 | 12 | 1.64 | |
| Chehalis | 12 | NPRC | 36 | 18 | 11 | 9.76 | |
| Chehalis | 13 | NPRC | 36 | 32 | 5 | 4.43 | |
| Snohomish | 14 | NPRC | 24 | 32 | 9 | 6.39 | |
| Pierce | 32 | NPRC | 36 | 19 | 5 | 6.73 | |
| Thurston | 34 | NPRC | 3 | 16 | 16 | .57 | |
| Pacific | 35 | NPRC | 16 | 13 | 8 W | 5.54 | |
| King | 36 | NPRC | 16 | 24 | 5 E | 2.36+3.08 | |
| King | 38 | NPRC | 16 | 24 | 6 | 2.5 | |
| Grant | 38 | NPRC | 1 | 16 | 24 | / | |
| King | 39 | NPRC | 16 | 21 | 5 | 8.99 | |
| King | 42 | NPRC | 10 | 25 | 4 | 11.34 | |
| Chehalis | 43 | NPRC | 7 | 36 | 18 | 8.13 | |

| | | | | | | |
|---|---|---|---|---|---|---|
| Whitman | 44 NPRC | 16 | 14 | 45 | 8.40 | |
| Whitman | 45 NPRC | 36 | 20 | 43 | 14.54 | |
| Whitman | 47 NPRC | 16 | 25 | 29 | 9.69 | |
| Lincoln | 49 NPRC | 16 | 26 | 33 | 13.20 | |
| King | 50 NPRC | 36 | 23 | 7 | 12.63 | |
| Spokane | 53 NPRC | 16 | 21 | 43 | 15.40 | |
| Spokane - | 55 NPRC | 16 | 22 | 43 | 10.54 | |
| Whatcom | 58 NPRC | 36 | 37 | 3 E | 1.36 | |
| Franklin | 61NPRC | 36 | 13 | 30 | 10.20 | |
| Chehalis | 65 NPRC | 36 | 20 | 12 | 11.55 | |
| Snohomish | 82 NPRC | 16 | 30 | 10 | / 8/23/1906 | |
| Snohimish | 83 NPRC | 16 | 30 | 8 | / 8/23/1906 | |
| Snohomish | 84 NPRC | 36 | 30 | 10 | / 8/23/1906 | |
| Whitman | 85 NPRC | 16 | 19 | 44 E | / 8/23/1906 | |
| Lincoln | 119 NPRC | 36 | 25 | 45 | 13.79 | |
| Chelalis | 121 NPRC | 16 | 18 | 5 | 11.94 | |
| Okanogan | 136 WGNRC | 9 | 31 | 25 | 40.01 4/23/1908 | |
| Okanogan | 137 WGNRC | 9 | 30 | 25 | 20.67 4/23/1908 | |
| Okanogan | 138 WGNRC | 7 | 30 | 25 | 12.23 4/23/1908 | |

| | | | | | | |
|---|---|---|---|---|---|---|
| Okanogan | 139 | WGNRC | 8 | 30 | 25 | 7.69 4/23/1908 |
| Okanogan | 140 | WGNRC | 34 | 31 | 25 | 13.19 4/23/1908 |
| Okanogan | 141 | WGNRC | 27 | 31 | 25 | 7.73 4/23/1908 |
| Douglas | 142 | WGNRC | 17 | 27 | 26 | 14.56 4/23/1908 |
| Douglas | 143 | WGNRC | 36 | 28 | 26 | 5.6 4/23/1908 |
| Stevens | 145 | WGNRC | 16 | 37 | 37 | 9.464/23/1908 |
| Douglas | 146 | WGNRC | 20 | 27 | 26 | 6.37 4/23/1908 |
| Douglas | 163 | WA&GN | 36 | 28 | 26 | 8.91 10/9/1908 |
| Douglas | 164 | GNRC | 35 | 28 | 26 | 7.5 10/9/1908 |
| Douglas | 172 | W&GNRC | 26 | 27 | 25 | 10.03 10/7/1908 |
| Douglas | 175 | W&GN | 19 | 27 | 26 | 12.65 10/8/1908 |
| Ferry | 177 | W&GN | 36 | 39 | 33 | / 10/9/1908 |
| Ferry | 178 | W&GN | 36 | 39 | 36 | 15.86 10/9/1908 |
| Douglas | 181 | GNRC | 24 | 27 | 25 | 5.20 10/9/1908 |
| Douglas | 182 | GNRC | 25 | 27 | 25 | 9.78 10/9/1908 |
| Douglas | 183 | W&GN | 17 | 27 | 26 | 8.42 10/9/1908 |
| Douglas | 185 | W&GN | 36 | 25 | 42 | 5.32 10/9/1908 |
| Okanogan | 196 | GN | 16 | 40 | 28 | 18.91 3/15/1909 |
| Walla Walla | 210 | NPRC | 13 | 7 | 36 | 5.57 7/30/1909 |
| Douglas | 212 | GNRC | 25 | 27 | 25 | 1.12 7/30/1909 |

| | | | | | | |
|---|---|---|---|---|---|---|
| Douglas | 218 GN | | 4 | 28 | 28 | 21.43 7/30/1909 |
| Ferry | 224 GNR | | 36 | 39 | 36 | 6.55 2/2/1909 |
| Douglas | 244 GN | Canceled | 9 | 27 | 26 | 6.41 4/4/1910 |
| Lincoln | 255 GNRC | | 36 | 22 | 31 | 1.27 6/18/1910 |
| Cowlitz | 256 GN&CRRC | | 20 | 8 | 2 | 5.09 6/23/1910 |
| Lewis | 303 NPRC | | 16 | 12 | 2 | 3.45 |
| Okanogan | 305 GNRC | | 36 | 29 | 23 | 5.0 9/28/1912 |
| Lincoln | 311 GN | | 16 | 26 | 36 | 7.62 3/20/1913 |
| Chelan | 321 GN | | 16 | 27 | 23 | 6.58 9/2/1914 |
| Okanogan | 326 GN | | 34 | 31 | 25 | 6.85 2/4/1915 |
| Yakima | 337 NPRC | | 16 | 13 | 18 | 2/14/16 |
| Chelan | 338 GNRC | | 16 | 26 | 21 | 2/15/16 |
| Snohomish | 339 NPR | | 36 | 30 | 10? | 8/23/1916 |
| Walla Walla | 340 NPR | | 16 | 19 | 33 | 14.79 3/13/1916 |

**Stopped here:**

Total Acquisitions: 67 Total Acreage: 543 (about)

# APPENDIX R

## Abbreviations For Public Railroad Rights of Way

Through Washington State lands

(Companies Alphabetical by Co. Abbreviation.)

| | |
|---|---|
| BB&BCR | Bellingham Bay & British Columbia Railroad. |
| BB&ERC | Bellingham Bay & Eastern Railway Co. |
| **BBT** | **Big Bend Transit** |
| C&CRC | Chehalis & Cowlitz Railroad Co. |
| CA&SRC | Coeur d'Alene & Spokane Railway Co. |
| CCRC | The Clarke County Railway Co. |
| CM&PRC | Chicago, Milwaukee & Pacific Railroad Co. |
| CM&PSRC | Chicago, Milwaukee & Puget Sound Ry. Co. |
| CM&SPRC | Chicago, Milwaukee & St. Paul Railway Co. |
| CNRC | Connell Northern Railway Co. |
| CVRC | Columbia Valley Railway Co. |
| **E&CVT** | **Everett & Cheney Valley Traction** |
| GH&CRRC | Grays Harbor & Columbia River Railway Co. |
| GH&PSRC | Grays Harbor & Puget Sound Railway Co. |
| GN&CRRC | Great Northern & Columbia River Ry. Co. |
| GNRC | Great Northern Railway Co. |
| HSC | The Hercules Sandstone Co. |
| I&WRC | Idaho & Western Railway Co. |
| KNRC | Kennewick Northern Railway Co. |
| M&ARC | Marysville & Arlington Railway Co. |

| | |
|---|---|
| **M&RLC** | **Merrill & Ring Lumber Co.** |
| MCRC | The Mill Creek Railroad Co. |
| MTRC | Milwaukee Terminal Railroad Co. |
| NARC | New Aukum Railroad Co. |
| NCRC | North Coast Railroad Co. |
| NCTC | Northern Coast Timber Co. |
| NPRC | Northern Pacific Railway Co. |
| NY&VRC | North Yakima & Valley Railway Co. |
| O&WRC | Oregon & Washington Railroad Co. |
| OR&NC | The Oregon Railroad & Navigation Co. |
| OTRC | Olympia Terminal Railway Co. |
| OWR&NC | Oregon, Washington Ry. & Navigation Co. |
| P&SRC | Portland & Seattle Railway Co. |
| **PLC** | **Polson Logging Co.** |
| PS&CRC | Puget Sound & Cascade Railway Co. |
| PS&WHRC | Puget Sound & Willapa Harbor Railway Co. |
| PV&YRC | Portland, Vancouver & Yakima Railway Co. |
| **RLC** | **Robbins Logging Co.** |
| S&BCRC | Spokane & British Columbia Railway Co. |
| S&ERC | Spokane & Inland Empire Railway Co. |
| S&IRC | Spokane & Inland Railway Co. |
| S&LLRC | Springdale & Long Lake Railway Co. |
| S&MRC | Seattle & Montana Railroad Co. |
| SF&NRC | Spokane Falls & Northern Railway Co. |
| SIRC | Spokane International Railroad Co. |
| SLR&TC | Silver Lake Railway & Timber Co. |

| | |
|---|---|
| SP&SRC | Spokane, Portland & Seattle Railway Co. |
| SPA&LCR | Seattle, Port Angeles & Lake Crescent Ry. Co. |
| SPM&MRC | St. Paul, Minneapolis & Manitoba Ry. Co. |
| SR&TC | Seattle Railway & Timber Co. |
| **SVL&WC** | **Spokane Valley Land & Water Co.** |
| T&ERC | Tacoma & Eastern Railway Co. |
| TERC | Tacoma Eastern Railway Co. |
| W&GNRC | Washington & Great Northern Railway Co. |
| WCC | Wilson Coal Co. |
| WCRC | Washington Central Railway Co. |
| WCRRC | Washington & Columbia River Railway Co. |
| WERC | Washington Electric Railway Co. |
| WRC | Waterville Railway Co. |
| **WTC** | **Weyerhaeuser Timber Co.** |
| YP&SRC | Yakima, Portland & Seattle Railway Co. |

# APPENDIX S

## State Public Railroad Rights of Way List (incomplete)

State DNR Dep't. of Records

| County | # | Buyer | Section | Twsp | Range | Acres | Date |
|---|---|---|---|---|---|---|---|
| King | 1 | NPRC | 36 | 22 | 4 E | 2.53 | 3/26/02 |
| " | " | " | 36 | 21 | 4 E | / | |
| Clark | 2 | PV&YRC | 36 | 4 | 3 E | 12.44 | |
| Clark | 3 | PV&YRC | 36 | 4 | 2 E | 14.02 | |
| Stevens | 4 | SF&NRC | 16 | 40 | 41 | 12.32 | |
| Stevens | 5 | SF&NRC | 36 | 33 | 39 | .83 | |
| Stevens | 6 | SF&NRC | 36 | 36 | 38 | 3.22 | |
| Stevens | 7 | SF&NRC | 36 | 37 | 37 | 3.64 | |
| Skamania | 8 | CVRC | 16 | 1 | 5 | 12.71 | |
| Skamanish | 9 | BB&ERC | 16 | 27 | 4 | 13.10 | |
| Whatcom | 10 | BB&BCR | 16 | 40 | 5 | 3.94 | |
| Whatcom | 11 | NPRC | 26 | 20 | 12 | 1.64 | |
| Chehalis | 12 | NPRC | 36 | 18 | 11 | 9.76 | |
| Chehalis | 13 | NPRC | 36 | 32 | 5 | 4.43 | |
| Snohomish | 14 | NPRC | 24 | 32 | 9 | 6.39 | |
| Snohomish | 15 | OR&NC | 36 | 18 | 40 | 14.09 | |

. . .(#16-337 deleted for printing, also found in MOCD)

| | | | | | | | |
|---|---|---|---|---|---|---|---|
| Yakima | 337 | NPRC | 16 | 13 | 18 | | 2/14/16 |
| Chelan | 338 | GNRC | 16 | 26 | 21 | | 2/15/16 |
| Snohomish | 339 | NPR | 36 | 30 | 10? | | 8/23/1916 |
| Walla Walla | 340 | NPR | 16 | 19 | 33 | 14.79 | 3/13/1916 |
| Lewis | 343 | WERC | 36 | 13 | 1 W | | 7/6/1916 |

# APPENDIX T
## CHICAGO LETTERS 1975-1978

LETTER 1

**Chicago, Milwaukee, St. Paul and Pacific Railroad Co.**
Law Department
Room 815 Skinner Building, 1326 Fifth Avenue
Seattle, Washington 98101 - Phone (206) 628-3645

James E. Nelson
Western Counsel
J. Fred Simpson
Dennis G. Opachki
David H. Boyd
General Attorneys

June 18, 1975

Bert L. Cole
Commissioner of Public Lands
State of Washington
Department of Natural Resources
Olympia, WA 98501

Re: Appropriation of Railroad Right of Way -
Jefferson County - Illegal State Action

Dear Commissioner Cole:

The Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee Road) has received a so-called order (copy attached) from the Department of Natural Resources bearing your signature dated April 18, 1975, which purports to appropriate certain property and rights therein which are owned by this railroad.

The Milwaukee purchased this property at its full fair market value several years ago. Acquisition of this property was in the years 1909 through 1910. Since that time the Milwaukee has continued to pay locally assessed taxes on this property. The acquisition of this property was pursuant to the terms of the Laws of 1901, Ch. 173, @1, p. 353 , et seq., as amended by Laws of 1907, Ch. 104, @1, et seq. There was[sic] no terms, condition or proviso in these statutes or in the respective instruments written thereunder which permitted forfeiture by reason of non-use. Accordingly, the Milwaukee has a perpetual easement in the property described in your order and is free to develop the same for railroad purposes in accordance with the demands of business.

Your order purporting to cancel certain right of way owned by the Milwaukee is based upon a statute (RCW 79.01.336) enacted in 1927. This statute does not apply to the railroad rights of way, and certainly by no stretch of the Constitution **[Bert L. Cole, Commissioner Page Two - - June 18, 1975]** can it be used for divestiture of property rights acquired and held prior to its effective date. The action contemplated by your order of April 18, 1975, contravenes several sections of the Washington and United States Constitutions. In addition, I note that, procedurally, you are required to procure a judicial determination authorizing appropriation of private property and pay just

compensation before appropriating such property under the constitutions. And, of course, the state is required to provide such notice and hearing in this regard as will satisfy the fundamental requirements of procedural due process of law, also guaranteed by the constitutions. None of these procedural requirements have been satisfied, nor is there any substantive authority for your action.

The order issued by your department constitutes illegal state action and results in considerable damage and injustice to the Milwaukee. Therefore, it is demanded that you vacate your order in timely fashion before further damages occur.

May I be timely advised of your intentions in this matter.

Very truly yours,

/s/ David H. Boyd

David H. Boyd

General Attorney

DHB:jsk
enc.
cc.: Mr. W. H. Ploeger
Mr. Q. W. Torpin
Mr. R. G. Sackerson
Mr. P. W. Scott

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LETTER 2

**Chicago, Milwaukee, St. Paul and Pacific Railroad Co.**

Law Department
Room 815 Skinner Building, 1326 Fifth Avenue

Seattle, Washington 98101 - Phone (206) 628-3645

James E. Nelson
Western Counsel
J. Fred Simpson
Dennis G. Opachki
David H. Boyd
General Attorneys

December 10, 1975

Bert L. Cole
Commissioner of Public Lands
State of Washington
Department of Natural Resources
Olympia, WA 98501

Attention: Walt Carlson

Re: Appropriation of Railroad Right of Way -
Clallam County - State of Washington
Law Dept. File: GF 2204

Dear Mr. Carlson:

I have reviewed your letter of October 22, 1975, and reviewed your statements therein. (1) that RCW 79.01.336 contains the same language (forfeiture for two years non-use) its predecessors did as far back as 1895 and (2) that this statute applies to railroads.

I have reviewed my earlier research on this subject to verify the position of my earlier letter.

The 1895 version of RCW 79.01.336 did not contain a provision requiring forfeiture for a two-year period of non-use. Nor did the 1897 version of RCW 79.01.336 contain

such a provision. As you will recall, the Milwaukee acquired the subject right of way during the years 1909-1910, hence there was no statute in effect at the time of purchase requiring or providing for forfeiture. The first statute which treats the forfeiture for non-use idea is the 1915 version of RCW 79.01.336. This version was, of course, enacted after the Milwaukee's purchase, and specifies that the certificate of right of way must contain the forfeiture provision before the same is effective.



The 1895, 1897, 1915 and 1921 versions of RCW 79.01.336 specifically dealt with the right of ways for logging--not railroads. Further, the 1915 and 1921 version specifically distinguish railroad rights of way from such rights of way as are covered by those statutes.

The Railroad rights of way in this case were granted under Laws of 1901, ch. 173, @1-9, p. 23 as amended by Laws of 1907, ch. 104, @1. p. 201. The statutes are the preceding version of RCW 79.01.344. These enactments do not deal with logging rights of way, but with railroad rights of way. There is no provision for forfeiture of railroad right of way, through non-use, that I have found. Nor do the certificates granting right of way to the Milwaukee contain such a provision. Accordingly, it appears reasonable to

assume that the Milwaukee has, at least, a permanent easement in this land which it may develop according to the dictates of its business.

As I stated in my earlier letter of June, 1975, the state cannot divest the Milwaukee of its property right by simply sending out an ex parte order, as the constitutions require much more in terms of procedural due process. Further, as you know, the federal and state constitutions require that private property owners be compensated where their property is taken or damaged for public use.

In order that this matter may be more speedily resolved, I ask that you send me a copy of the (informal) attorney general's opinion to which you refer so that I can determine the legal basis for your position and advise my client accordingly. During the interim, I will advise the Milwaukee that the order purporting to cancel right of way issued under Commissioner Cole's signature is illegal and therefore a nullity and of no legal consequence.

Very truly yours,
/s/ David H. Boyd
David H. Boyd
General Attorney

DHB:jsk

LETTER

**Chicago, Milwaukee, St. Paul and Pacific Railroad Co.**

Law Department
Room 815 Skinner Building, 1326 Fifth Avenue
Seattle, Washington 98101 - Phone (206) 628-3645

[Attorney's names deleted for printing]

July 18, 1978

Mr. Dave Bateman
Assistant Attorney General
Department of Natural Resources
State of Washington
Olympia, Washington 98504

Dear Mr. Bateman:

After speaking with you on several occasions on the telephone, I have taken another look at our file pertaining to the intents of the State of Washington to deprive the Railroad of certain parcels of Railroad right of way in Clallam County on the basis of abandonment. It does not seem to me that this is the type of situation where the Railroad could lose its rights by abandonment. In addition, it is not the intention of the Railroad to abandon that property.

Sincerely,

/s/ Dennis G. Opacki
Dennis G. Opacki
General Attorney
DGO:an:2-5

# APPENDIX U

## DNR DEPARTMENT ORDER

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**STATE OF WASHINGTON**
DEPARTMENT OF NATURAL RESOURCES
Bert L. Cole, Commission of Public Lands

Chicago, Milwaukee
& Puget Sound Railway Company
Skinner Building
1326 5th Avenue
Seattle, Washington 98101

**ORDER**

It is ordered that Commissioner's Order 75-144, canceling the Railroad Right of Way easements, conveyed under Application Nos. 6837, 6838, 6839, be rescinded; and

Reinstate those portions of Railroad Rights of Way over and across the SW1/4NE 1/4, NE1/4NW1/4 of Section 29, Township 28 North, Range 13 West, W. M., under Application No. 6837; Lot 6 of Section 33, Township 28 North, Range 13 West, W.M., under Application No. 6838; and the SW1/4SW1/4 of Section 34, Township 28 North, Range 13 West, W.M., under Application No. 6839 canceled by said Commissioner's Order 75-144.

JUSTIFICATION

A Notice of Intent has been given by the Railway

Company that the above-referenced railroad rights of way have not been abandoned.

Dated this 7th day of August, A.D. 1978.

State of Washington
Department of Natural Resources

by /s/ Bert L. Cole
Bert L. Cole
Commissioner of Public Lands

App. Nos. 6837, 6838, 6839
[Login Stamp deleted for printing]

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# APPENDIX V

## The Attorney's Pocket Dictionary

ABCDEFGHIJKLMNOPQRSTUVWXYZX

Search **abandonment**

*abandonment* absconding, debtor,
**NEXT PAGE**

Voluntary relinquishment of property or a right by the owner or holder, with the intention of terminating ownership and without vesting ownership in another person. Abandonment is composed of two elements, an intention to relinquish the right or property without intending to transfer title to any particular person and the external act by which such intention is carried into effect, both elements must concur. See Roebuch v. Macosta County Road Commission, 229 N.W.2d 343, 5 Mich. App. 128. Abandonment has acquired technical and statutory meanings in various statutes such as "child abandonment", "Abandonment of easement", "abandonment of husband or wife."

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Please send your comments to landlord@netcom.ca

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http://www.landlords-tenants.com/dictionary/dictionary.asp?wordstr=abandonment 8/21/2003

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**END**